

REGISTERED
SPEED POST



F.No. 195/1461&1462/12-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. 13-11-13

ORDER NO. 1370-1371/13-Cx DATED 11. 11. 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 orders-in-appeal passed by Commissioner of Central Excise (Appeals-II), Mumbai as mentioned in column No.3 of table in para 1 of this order

Applicant : M/s Akshita Exports, Surat

Respondent : Commissioner of Central Excise, Raigad

ORDER

These revision applications are filed by M/s Akshita Exports, Surat, against the orders-in-appeal passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to orders-in-original passed by the Deputy Commissioner of Central Excise (Rebate), Raigarh as detailed below:.

Sl.No.	R.A.No.	Order-in-appeal No. & date	Order-in-original No. & date	Amount of rebate claim (Rs.)
1	F.No.195/1461/12-RA	US/499/RGD/12 dt. 21.08.12	1904/11-12 dt. 27.1.12	8071603
2	F.No.195/1462/12-RA	US/500/RGD/12 dt. 22.08.12	1880/11-12 dt. 24.1.12	5178049

2. Brief facts of the cases are as under:

2.1 Brief facts of case in R.A.No.195/1461/12 (OIA No.499 dated 21.8.12).

2.1.1 Applicant a merchant exporter filed 58 rebate claims of Rs.8071603 for duty paid excisable goods exported during January 05 to January 2008. Department issued deficiency Memo cum Show Cause Notice dated 15.12.11 proposing rejection of said rebate claims on the basis of discrepancies pointed therein. The gist of objection is as under:

1.	Chapter Sub-heading mentioned the CX invoice not tallying with chapter sub-heading declared in the Shipping Bill.	In all cases
2.	Genuineness of Duty payment has not been submitted from the Central Excise Authority indicating the debit entries and verification of input stage credit on the raw material.	In all cases
3.	Bank Realisation Certificate not submitted	In few cases
4.	Name & designation of the Authorised Signatory not mentioned	In all cases
5.	Date & Time of removal of goods not mentioned on the ARE-I.	11 R.C.'s i.e. 1786, 5712, 2788, 29332, 29333, 3788, 34678, 2372, 4732, 19988, 12841
6.	Date of issue of ARE-I is different and subsequent to the date of issue of CX invoice and date of removal of goods (i.e. ARE-I's are prepared on subsequent dates)	50 R.C.'s (All 58 RC's except R.C.No 1786, 5712, 2788, 29332, 3788, 34678, 19988, 4732)
7.	Short Shipment of goods	3 RC's
8.	The claim was submitted after expiry of time. Hence it was time barred.	One

2.1.2 The applicant replied to the said Show Cause Notice and mainly stated as under:-

- (a) As regards the observation that the chapter sub-heading mentioned in the invoice did not tally with the chapter sub-heading declared in the shipping bill; they stated that the observation was of technical nature; that in the invoice as well as shipping bill; the goods exported were shown as dyed as well as printed fabrics which tallied with the invoice & the shipping bill; that the wrong mention of chapter sub-heading number could not result in denial of rebate claims when the description of the fabrics was clearly mentioned in the invoice & shipping bill; that further the shipping bill was prepared by the CHA & that there was no role of the exporter & any technical mistake made by the CHA could not result in denial of rebate claims when the invoice & the shipping bill showed that the goods exported were dyed & printed fabrics.
- (b) As regards submission of the genuineness of duty payment by the CX authority indicating the debit entries and verification of input stage credit on the raw material, they stated that as per para 6.3 of chapter 8 of the CBEC Manual it was the duty of the Supdt. of CX having jurisdiction over the processor unit to verify the correctness of the amount of duty paid or duty payable; its entry in Daily Stock Account maintained under Rule 10 & to send it to the rebate sanctioning authority in a tamper proof sealed cover.
- (c) As regards non-submission of Bank Realization Certificates (BRCs), they stated that the same were being furnished herewith.
- (d) As regards the name & designation of the Authorised Signatory not being mentioned in the ARE-1, they stated that in the ARE-1s, the name of the Authorised Signatory/Director of the processor as well as the Proprietor/Authorised Signatory of M/s. Akshita Exports was clearly shown; that further on such type of technical queries, substantial benefit of rebate could not be denied.

(e) As regards the observation that date & time of removal of goods was not mentioned in the ARE-1 they stated that date of removal of goods was mentioned in the ARE-1 as was confirmed on the reverse of the ARE-1 by putting stamp & signature; that further on such type of technical queries, substantial benefit of rebate could not be denied.

(f) As regards clarification sought in respect of rebate claims where date of issue of ARE-1 is different and subsequent to the date of issue of Central Excise Invoice and date of removal of goods, they stated that date of invoice and actual removal of goods is the same; the goods have been removed for export on date of invoice under ARE-1 of subsequent date which have been accepted and approved by jurisdictional Inspector/Superintendent of Central Excise. The goods indicated in the ARE-1 is beyond doubt exported. They further stated that technical lapse condonable and substantial benefit are allowable.

(g) As regards short shipment of goods in respect of R.C.No.4731 dated 29.05.2007, R.C.No.4732 dated 28.05.2007, R.C.No.4730 dated 29.05.2007 and they stated that they plan to export the goods under one container bearing No.KLTU 1201304 for 3 shipping bills, however the entire goods couldn't be stuffed and therefore there is a short shipment of goods and requested to grant rebate claim of duty as per actual goods exported. They also submitted that fact may be verified from the respective custom authorities.

(h) As regards observation in respect of RC No.19988/07.02.2007 that the rebate claim was submitted late after expiry of the time limit of one year in See 11B, they stated that after considering the exclusion clause under Limitation Act & General Clauses Act, the rebate application was filed within one year therefore, the application was to be considered as filed with the prescribed time limit of one year.

(i) They were requested to kindly confirm whether the supplier of goods for export has availed the Notification No.29/2004-CE dated 09.07.2004 or 30/2004-CE dated 09.07.2004 or simultaneously availed both the Notification for clearance of goods from their factory. It appears that as per Sub-Section (1A) of Section 5A of Central Excise Act 1944 manufacturer cannot opt to pay duty under Notification No.29/2004 dated 09.07.2004 as

amended or any other Notification and cannot avail the cenvat credit of the duty paid on input as the goods manufactured are fully exempted Notification No.30/2004 CE dated 09.07.2004 and they submitted that in this case the supplier manufacturer have taken the credit of duty paid grey fabrics and have made the payment on processed fabrics under Notification No.29/2004-CE dated 09.07.2004 which is permissible in law. They stated that the processor can opt the benefit of both the notification simultaneously. The rebate sanctioning authority can verify this aspect by referring the matter to the concerned Range Superintendent having jurisdiction over the processor unit. The only criteria to be examined that the processed fabrics is cleared from duty paid grey fabrics. They further submitted that the legal issues cannot be raised after a period of five years as the general law of limitation for rebate claims is one year.

2.1.3 In this case the original authority rejected the said rebate claims vide order-in-original dated 27.1.12 on the ground that the goods exported were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the appellants could not have paid duty and did not have the option to pay the duty. The adjudicating authority further observed that as the DGCEI has issued a show cause notice to the appellant as well as processors M/s Agarwal Textile Mills and M/s Swastik Poly Prints Pvt. Ltd. on the ground that the duty for which the rebate claims were filed had been paid out of Cenvat credit availed by the processors on the strength of bogus/fake invoices; the appellant failed to prove the genuineness of the duty payment and veracity of the input stage credit taken by the processors M/s Swastik Poly Prints Pvt. Ltd. , M/s Agarwal Twisting works, M/s Agarwal Silk Mills and M/s Binda Silk Mills; Chapter sub heading Number of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills do not tally; the date and time of removal of the goods was not mentioned in ARE-1; the name and designation of the authorised signatory is not appearing on ARE-1; there is difference in the date of removal shown in the excise invoice and ARE-1; claim no. 19988 dated 07.12.2007 was filed after the expiry of stipulated time of six months; in respect of three claims there is no endorsement from the customs authorities regarding the short shipment of the goods and thus the procedure required under

the Notification No.19/2004-CE(NT) dated 06.09.2004 has not been followed. He further held that the deficiency Memo cum Show Cause Notice was not barred by limitation.

2.2 Brief facts of case in R.A.No.195/1462/12 (OIA No.500 dated 22.8.12)

2.2.1 Applicant M/s Akshita Exports, a merchant exporter filed 34 rebate claims of Rs.5178049/- for duty paid on excisable goods exported. DGCEI after conducting detailed investigation in the matter issued Show Cause Notice No.Inv/DGCEI/BRU/13/2010 dated 2.12.10 proposing to reject said 34 rebate claims and impose penalty under Section 11AC of Central Excise Act 1944. The facts of the case in brief are that M/s. Akshita Exports was engaged in the export of dyed/printed/processed fabrics; that they purchased grey fabrics from the market (duty paid as well as non-duty paid) & got it processed from the processors & subsequently either exported or sold the finished product in the open market; that the fabrics processed from the duty paid grey fabrics were being exported under claim of rebate; that M/s Agarwal Textile Mills, Vadtal Devdi Road, Katargam, Surat & M/s Swastik Polyprints Pvt Ltd, Plot # 285-286 Rd No.2. GIDC, Sachin, Surat 394 230 were processors engaged in the business of dyeing/printing/processing of polyester grey fabrics; that M/s. Akshita Exports have shown supply of duty paid grey fabrics to the aforesaid processors who have availed cenvat credit under the Cenvat Credit Rules 2004 & after processing cleared the same on payment of duty to M/s. Akshita Exports who in turn exported the said processed fabrics on payment of duty & filed claim for rebate of central excise duty under Rule 18 of the Central Excise Rules 2002.

2.2.2 In this case original authority rejected said rebate claims vide order-in-original dated 24.1.12 and imposed equal penalty under Section 11AC of the Central Excise Act, 1944 on the ground that the duty was paid on the processed fabrics out of wrongly availed Cenvat credit by processor and DGCEI investigation has conclusively proved the dubious role of the merchant exporter himself in actively making arrangements for the bogus invoices from the grey suppliers; the recovery of bogus credit from the processor is mutually exclusive of the rebate of duty paid on exports;

the nexus between the merchant exporter in passing on bogus credit and the processor in availing such credit is clearly proved; Shri Ritesh Agarwal, Manager and authorised Signatory of M/s Agarwal Textile Mills as well as Director of M/s Swastik Polyprints Ltd. has admitted that only invoices of grey fabrics were received without any grey fabrics; the appellant is silent in their reply about the procurement of invoices of grey fabrics and the availment of bogus credit by the processors at the behest of merchant exporter and utilisation of such bogus credit towards payment of duty on the goods exported and further observed that any cash transaction cannot be proved by documentary evidence but only by placing reliance on the confessional statements of the person involved in such a transaction.

2.2.3 In this case the applicant a merchant exporter had purchased the grey fabrics from grey suppliers who did not exist at all. So the cenvat credit availed by processor on the basis of such bogus invoices was availed fraudulently. Applicant has master minded the said fraud.

3. Being aggrieved by the said orders-in-original, the applicant filed appeals before Commissioner (Appeals) who in first case at Sr.No.1 of table in para 1 accepted the plea that applicant has availed cenvat credit facility and therefore goods were not exempt from payment of duty under Notification No.30/04-CE. However on other grounds, he rejected the appeal vide order-in-appeal No.499/12 dated 21.8.12. Applicant's appeal in 2nd case Sr.No.2 of table in para 1 with reference to order-in-original No.1880/11-12 dated 24.1.12 was also rejected vide order-in-appeal No.500/12 dated 22.8.12 on the ground that applicant merchant exporter was party to fraudulent availment of cenvat credit on the basis of bogus invoice and fraudulent payment of duty on exported goods.

4. Being aggrieved by the said orders-in-appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Grounds in Revision Application No.195/1461/12 (OIA No.499 dated 21.8.12):

4.1.1 The applicant submits that the Commissioner (Appeals) have erred in not giving finding on the vital point of law that no notice can be issued after a period of fifteen days from the date of lodging of the claim or at the most within one year from the date of lodging of the rebate claim. Since, the issue have been settled by High Court and Supreme Court that where no limitation have been prescribed in law, the general law of limitation is one year. Thus, the show cause notice dated 15.12.2011 for the rebate claims filed from January, 2005 onwards is time barred as the said show cause notice have been issued beyond the permissible limit of fifteen days and maximum period of one year as held by Supreme Court. In view of this, the notice is not sustainable and in result orders passed by the lower authorities are not maintainable in law and therefore the appeal is required to be allowed with consequential relief.

4.1.2 The applicant submits that the finding of the Commissioner (Appeals) based on the finding of the adjudicating authority for rejection of rebate claims on the ground that the processor had availed the credit wrongly on grey fabrics and the grey manufacturers were figuring in alert circular is erroneous view of the lower authorities as there is nothing in the show cause notice to show that the goods exported by the applicant were manufactured from grey fabrics supplied by non-existent suppliers and the orders passed by the lower authorities are without any corroborative evidences on record and therefore the said orders are not sustainable in law which are required to set aside.

4.1.3 The applicant submits that the Commissioner (Appeals) have erred in giving finding that the DGCEI had issued a show cause notice dated 03.12.2010 for fraudulent availment of Cenvat Credit on the basis of invoices issued by bogus/non-existent grey manufacturers for denying the present rebate claims as the said show cause notice was containing those persons who were not in existence and therefore the separate show cause notice was issued for the export made under the said show

cause notice. On the contrary DGCEI scanned entire records of the applicant and found that the grey manufacturers were in existent and therefore out of all rebate claims no action was preferred for these 58 rebate claims submitted before the rebate sanctioning authority. In view of this, the finding of the lower authorities are not correct on merits and evidences and therefore also the said orders are required to set aside.

4.1.4 The applicant submits that the transaction between the processors and the merchant exporters are genuine and at arms' length and nothing adverse have been found or brought on record in the show cause notice or adjudication order in the form of evidences either by the adjudicating authority or by the Commissioner (Appeals) and therefore orders passed by the lower authorities without any corroborative evidences or allegations in the show cause notice are not sustainable in law and therefore the said adverse finding is required to set aside allowing the appeal considering the evidences produced before lower authorities as well as before this Hon'ble Court in the interest of justice.

4.1.5 The applicant submits that the judgments cited by the Commissioner (Appeals) are not applicable to the facts of the case of the applicant as the applicant have produced ample evidences as regards to the verification of the existence of grey Manufacturers in the form of Annexure-D verification and verification made by DGCEI authority who have clearly allowed the said transactions of grey suppliers and export of the goods and no show cause notices were issued for the said export. Thus, the judgment cited by the Commissioner (Appeals) are not applicable to the facts of the present case and therefore very cause for denial of rebate claims are not sustainable in law.

4.1.6 The applicant submits that the Commissioner (Appeals) have overlooked hundreds of evidences produced before him as regards to re-verification of duty payment certificate as well as verification of grey manufacturer suppliers and therefore the order passed by the Commissioner (Appeals) appeared to be incorrect in law and without considering the evidences on merits.

4.1.7 The applicant submits that the Commissioner (Appeals) have failed to give any findings on the facts brought to his knowledge that duty paid certificates were re-verified by the excise officers and were sent to rebate sanctioning authority. However, the said certificates were found missing in the file which were brought on record obtaining the same under RTI application. Thus, the duty paid goods were exported and remittance certificates were produced. In view of this, the orders of the lower authorities are not correct in law and required to set aside in the interest of justice.

4.2 Grounds in Revision Application No.195/1462/12 (OIA No.500 dated 22.8.12):

4.2.1 The applicant submits that the lower authorities have erred in not giving proper findings on the submissions made on the point of law and evidences on record and straight away rejecting the rebate claims on the basis of the allegations made in the show cause notice dated 02.12.2010 and therefore also the entire orders of the lower authorities are not correct in law.

4.2.2 The applicant submits that the lower authorities have erred in not considering the request of the cross-examination of the vital witnesses whose statements have been recorded against the applicant and relied by the lower authorities for the rejection of the rebate claims and therefore the orders of the lower authorities are in violation of principles of natural justice which is required to set aside allowing the appeal with consequential relief in the interest of justice.

4.2.3 The applicant submits that the lower authorities have erred in not accepting the evidences on record that the goods were exported under duty paid documents in the form of Central Excise Invoice issued under Rule 11 by the concerned processors and the said payments were accepted by the revenue in terms of Rule 8 of the Central Excise Rules, 2002 while filing the monthly returns and showing the duty payment for the goods cleared under the respective invoices. The said goods have been exported and therefore there is no cause for rejection of rebate claims. In view of this, the orders of the lower authorities relying upon the evidences which are not

material documents, are not sustainable in law. In view of this, the orders of the lower authorities are required to set aside in the interest of justice.

4.2.4 The applicant submits that the rebate sanctioning authority failed to appreciate that the duty paid goods were exported which were accepted by the Customs Authority and foreign remittance were received and there was no dispute regarding transportation of the finished goods under the respective invoices of the processors. In view of this, the orders of the lower authorities against the evidences on record is not sustainable in law.

4.2.5 The applicant submits that the lower authorities have failed to appreciate the point of law that for the same set of facts, a show cause notice of the same date dated 02.12.2010 was issued by DGCEI to the said processors M/s. Swastik Polyprints Pvt. Ltd. and M/s. Agarwal Textile Mills for the recovery of the credit wrongly availed on the basis of the grey suppliers which was the subject matter of the show cause notice dated 02.12.2010 issued to the applicant for rejection of the rebate claims. The lower authorities have confirmed the said show cause notice vide adjudication order dated 25.01.2012. In view of this, the goods cleared under the invoices of the said processors stand regularized and the duty cannot be demanded twice on the same goods and therefore the rebate claims cannot be rejected once the duty is paid for the credit taken on the basis of the invoices of the grey fabrics. Considering this fact, the rebate claims filed for the goods exported are required to be allowed setting aside the order passed by the rebate sanctioning authority. In support of this, the applicant relies upon the judgment in the case of Panchmukhi Processors Pvt. Ltd. reported in 2010 (258) ELT 152 (Tri.-Ahmd.).

4.2.6 The applicant submits that the lower authorities have relied upon the judgment of the Bombay High Court in the case of Rainbow Silk Mills which is a remand case for reconsideration on the ground of accumulated credit. The criteria laid down is not applicable to the facts of the present case as it is not the case of the department that the credit taken on the grey fabrics were only used in the clearance of the final products exported as there is no one to one correlation under Cenvat

Credit scheme and therefore the finding of the lower authorities is not correct in law and the said orders are required to set aside in the interest of justice.

4.3 Applicant further made following written submissions vide letter dated 27.9.13:

4.3.1 The submissions made in appeal memo is reiterated and following further submissions and evidences produced from page no. 1 to 335 may please be taken on record for allowing appeal with consequential relief.

4.3.2 The applicant is a merchant exporter and the applicant had purchased grey fabrics from various grey manufacturers registered with Central Excise authority and the said grey fabrics were sent to processor for processing and resultant processed fabrics were exported. The duty suffered on the said exported goods were claimed as rebate in accordance with law.

4.3.3 On 09.04.2008, DGCEI, Vadodara searched the premises of the present applicant and withdrawn all records for verifying the grey suppliers invoices whether the said grey suppliers/manufacturers are in existence or not. Accordingly, the entire records of the applicant were scanned by the said DGCEI authority and had found that out of several grey manufacturer suppliers five grey manufacturer suppliers were found non-existent and therefore the rebate claims of Rs.5302057/- was proposed to be rejected vide show cause notice F.No.INV/DGCEI/BRU/13/2010 dated 02.12.2010 and other grey suppliers and their registration were found genuine which are as under:-

- 1 Maa Krupa Textile
- 2 Prahaladbhai Kanjibhai (HUF)
- 3 Sadguru Fabrics
- 4 Arvindbhai Kanjibhai HUF
- 5 Krishna Corporation
- 6 Sabir Textiles
- 7 Mahabali Fabrics
- 8 Shikha Textiles
- 9 Agarwal Twisting Works
- 10 Jyoti Silk Mills
- 11 Indian Polyfins P. Ltd.
- 12 Saraswat Trading Investment Co.

13	Singhal Brothers
14	Rahul Textiles
15	Saraswat Industries
16	P Kumar Fabrics
17	Bharat Enterprises
18	M.B.Twisters
19	Shree Hari Fabrics
20	Sanjay Textiles
21	Shree Tirupati Synthetics
22	Shreenathji Textiles
23	Shri Tejanand Silk Mills
24	Hanuman Textiles
25	Hardik Textile
26	Priyadarshini Fashion P. Ltd.
27	Shree Hariom Silk Industries
28	Mahalaxmi Corporation
29	Ram Tex Fab

4.3.4 After scanning all the grey manufacturer suppliers invoices for the goods exported, only five grey suppliers are found fake and non-existent during the course of investigation and therefore there is no reason to deny the rebate claims for others who are found genuine and existence. Further, the above 29 suppliers of the grey fabrics are not under Alert Circulars but are found genuine and existence. In view of this, the orders of the lower authorities for rejection of the rebate claims are not correct.

4.3.5 It is submitted that we have made payment to grey suppliers for the goods supplied and foreign remittance have been received for goods exported and duty payment certificates have been produced for goods exported. In view of this, it is prayed to allow the appeal with consequential relief considering the evidences produced hereinabove in the interest of justice.

4.4 In written submission dated 18.10.2013, the applicant mainly stated as under:-

4.4.1 The applicant had filed rebate applications to the rebate sanctioning authority Deputy Commissioner, Central Excise, Raigarh, Maharashtra for the total sum of Rs. 1,33,73,660/- for the duty paid goods exported which were pending for disposal

before the said authority. In the meanwhile Director General of Central Excise, Intelligence, Vadadora, Regional Unit had made search on 09.04.2008 at the premises of the applicant and had withdrawn the records for investigation under regular panchanama whereby all records pertaining to the export of the goods and rebate applications pending before the rebate sanctioning authority were withdrawn for scrutinization and scanning of the documents. After scrutiny of the documents for the rebate claims filed and pending before the Deputy Commissioner, Central Excise, Raigad, the said investigating authority came to conclusion that the rebate claims filed to the extent of amount of Rs. 53,02,057/- pending before the jurisdiction authority were not admissible as the supplier of the grey fabrics were proved fake and non-existent and therefore out of total rebate claims of Rs. 1,33,73,660/-, a Show Cause Notice dated 02.12.2010 was issued to the applicant proposing rejection of rejection of rebate claims for the amount of Rs. 53,02,057/- as per Annexure -B1, B2, B3, B4 and B5 which are pertaining to the grey fabrics purchased from M/s. Balaji Silk Mills, M/s. Hindustan Garments, M/s. Suryanarayan Textiles and M/s. Shree Sai Textiles. The DGCEI Officers have scrutinized the genuineness of details of all grey suppliers as listed in Annexure-D1 & D2 to the Show Cause Notice and after scanning the documents it was found that only 5 grey suppliers were found fake and non-existent and therefore based on the said five grey suppliers rebate claims filed were proposed to be rejected as indicated in para 11 of the Show Cause Notice dated 02.12.2010 issued to the present applicant. In view of this, the goods processed and exported from Agarwal Textile Mills and M/s Swastik Poly Prints Pvt. Ltd. as indicated in Annexure- D1 and D2 except five grey suppliers were found genuine and admissible for rebate claims. This aspect of real facts on evidences have been ignored by lower authorities. Hence, the rebate claims are admissible.

4.4.2 Further, the duty payment certificates are found misplaced from the file of the Deputy Commissioner, Central Excise (Rebate), Raigad which established from the documents provided by the RTI authority showing that the Deputy Commissioner, Central Excise (Rebate) had issued a letter for re-verification of the duty payment certificate to the authority at Surat. Further, under RTI, duty payment

certificates have been provided which have been brought on record. Thus, the duty paid nature of the goods exported is beyond doubt proved.

4.4.3 Even after scanning of the grey supplies by Director General of Central Excise Intelligence, Vadodara Regional Unit and their Show Cause Notice dated 02.12.2010, the rebate for export of the goods were not processed and therefore the applicant had preferred writ petition in the High Court of Bombay vide number 5878 of 2011 for sanction and grant of rebate of Rs. 80,71,603/- which was disposed of on 01.08.2011 directing the rebate sanctioning authority to dispose of the rebate claims within a period of six months from 01.08.2011. Instead of disposing of the rebate claims considering the DGCEI Show Cause Notice F.No.INV/DGCEI/BRU13/2010 dated 02.12.2010, the Deputy Commissioner, Central Excise (Rebate), Raigad acted prejudicially issuing Show Cause Notice dated 15.12.2011 after a period of more than five years on technical grounds just to deny the legitimate rebate claims of the applicant and ultimately rejected the rebate claims against which appeal was preferred to Commissioner(appeals) who accepted several contentions of the applicant and however, upheld the order of the rebate sanctioning authority on the ground that the applicant did not produce evidence of genuineness of Cenvat Credit availed by the processors. The finding of the Commissioner(Appeals) appears to be incorrect when the Director General of Central Excise Intelligence, Vadodara Regional Unit while issuing Show Cause Notice dated 02.12.2010 have clearly found out that except five grey suppliers, other grey suppliers are found genuine and correct and in existence and duty paid nature of grey fabrics is accepted in exhaustive investigation which are the basis of evidence and therefore the finding of the Commissioner(Appeals) without accepting the said evidences that the applicant did not produce evidence of genuineness of the Cenvat Credit availed by the processors (M/s Swastik Poly Prints Pvt. Ltd. And M/s Agarwal Textile Mills) have vitiated the legitimate and genuine claim of the applicant. In view of this, the judgments cited by the Commissioner(appeals) of Rainbow Silk Mills and others in his order is not applicable as the facts of the case based on evidences is quite distinguishable.

5. Personal hearing was scheduled in this case on 30.9.2013 & 28.10.2013. Shri K.I.Vyas, advocate attended both the hearings on behalf of the applicants who reiterated the grounds of revision application and submissions made in their written submissions dated 27.9.13 and 18.10.13. Nobody attended hearing on behalf of respondent department.
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 in case of R.A.No.195/1461/12-RA (Order-in-Appeal No.US/499/RGD/12 dated 21.08.12) involving rebate claim of Rs.8071603/- the original authority rejected the rebate claim on grounds amongst other grounds that in 37 rebate claims, the goods were processed from M/s Agarwal Textile Mills and M/s Swastik Poly Prints Pvt. Ltd. and DGCEI issued a show cause notice to the applicant as well as said two processors for fraudulent availment of cenvat credit by the processor on the strength of bogus/fake invoices of non-existent grey fabric supplier and also that the genuineness of the duty payment on such impugned goods were not available on record. Commissioner (Appeals) while deciding appeal, upheld Order-in-Original w.r.t. ground of the original authority that DGCEI issued Show Cause Notice to the applicant as well as said two processors for fraudulent availment of cenvat credit by the processor on the strength of bogus/fake invoices of non-existent grey fabric suppliers and also that the duty payment certificates of said exported goods were not on record. However, Commissioner (Appeals) did not agree with the other grounds taken by original authority while deciding the appeal. In case of F.No.195/1462/12-RA (order-in-application No.US/500/RGD/12 dated 22.08.12), Government observes that the applicant filed 34 rebate claims of Rs.5302057/- for duty paid on excisable goods exported. DGCEI issued show cause notice No.Inv/DGCEI/BRU/13/2010 dated 2.12.2012 proposing rejection of said 34 rebate claims on the ground that two processors in these cases viz. M/s Agarwal Textile Mills, Surat and M/s Swastik Poly Prints Pvt. Ltd., Surat availed cenvat credit on the basis of invoices raised by five bogus/non-existent suppliers of grey fabrics namely M/s

Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles and duty paid from such fraudulently availed credit is not eligible for rebate claim. Commissioner (Appeals) upheld impugned order-in-original. Now, the applicant has filed these revision applications on various grounds mentioned in para (4) above.

8. Government first takes up the revision application No.195/1462/12-RA for decision wherein the rebate claims amounting to Rs.5178049/- was rejected by the original authority on the ground that the applicant got their impugned goods processed from two processors namely M/s Agrawal Textile Mills, Surat and M/s Swastik Poly Prints Pvt. Ltd., Surat, who received grey fabrics from five bogus/non-existent firms namely; M/s Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles as revealed in DGCEI investigation and paid duty on exported goods from wrongly availed credit on the basis of bogus invoices raised by said bogus firms. The rebate claims were denied since actually no duty was paid on said goods.

8.1 Government observes that the DGCEI investigated the case and issued show cause notice INV/DGCEI/BRU/13/2010 dated 2.12.2010 wherein they categorically stated that the said five suppliers were non-existent; that the processors availed credit on the basis of bogus invoices issued in the name of said five bogus suppliers; that the facts of the case clearly proves culpability of the merchant exporter; and that payment of duty from such fraudulently availed credit cannot be treated as payment of duty for granting rebate under Rule 18 of Central Excise Rules 2002. The DGCEI has issued a separate SCN No.DGCEI/AZU/36-134/2010-11 dated 2.12.10 for recovery of fraudulently availed credit on the basis of invoices issued by said five bogus/non-existent grey fabrics suppliers. The said SCN is issued to processors and applicant M/s Akshita Exports is also a co-noticee in that case of fraudulent availing of credit. The applicant in their written submission dated 26.9.2013 has stated that the said charges in the SCN was confirmed vide adjudication order dated 25.1.2012. As such, the applicant had

facilitated the wrong availment of cenvat credit by showing purchase/supply of grey fabrics on his account from the non-existent grey suppliers. Under such circumstances, the applicant was party to said fraudulent availment of cenvat credit & then payment of duty fraudulently from such credit, on exported goods. As such, applicant was party to said fraudulent availment of cenvat credit and the transaction between manufacturer and exporter was not bonafide.

8.2 Government observes that the contentions of the applicant that duty was paid on exported goods by issuing invoices under Rule 11 of Central Excise Rules 2002, and foreign remittances towards export sale proceeds were received, do not help them in making them entitled for rebate claim since the said goods were cleared for export by fraudulent payment of duty from wrongly availed cenvat credit as discussed in above para. The said fraudulent payment of duty are only debit entries on paper and no actual duty was paid and applicant was found party to said fraud. Government notes that governing statutory provisions of grant of rebate contained in Rule 18 of Central Excise Rules 2002 are as under:

"Rule 18: Rebate of Duty: Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, any fulfillment of such procedure, as may be specified in the notification."

The said provisions clearly state that rebate of duty paid on excisable exported goods is to be granted. In this case as discussed above, duty paid on exported goods from fraudulently availed cenvat credit cannot be treated duty paid under the provision of Central Excise Law. As such, exported goods cannot be treated as duty paid goods. Since the fundamental condition of payment of duty on exported goods is not satisfied the rebate claim were rightly held inadmissible in these cases.

8.3 Government notes that the case of M/s Roman Overseas decided vide G.O.I.

Revision Order No. 129/10-CX dated 07.01.10 relying on said G.O.I. Revision Order No. 304-307/07 dated 18.05.07 in the case Shree Shyam international Mumbai it was held that rebate claim cannot be denied to merchant exporter who is not party to fraudulent availment of cenvat credit by manufacturer of exported goods. The above mentioned G.O.I. order was challenged by department in a writ petition filed before Gujarat High Court. Hon'ble High Court of Gujarat 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 allowing rebate claims. 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. At this stage, we would like to deal with the judgements cited by the counsel for the department.

1) Reliance was placed on decision in case of New India Assurance Co. Shimla v. Kamla and others reported in (2001) 4 Supreme Court cases 342. In that case a driving license upon its expiry was presented for renewal. Authorities unmindful of its defects, renewed the same. The Insurance Claim repudiated the claim citing the reason that the original license was forged. It was contended that even if previously license may have been forged, upon renewal would be rendered valid. It was in this background that Supreme Court observed that "What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery."

2) Reliance was placed on decision of Punjab and Haryana High Court in case of Golden Tools International v. Joint DGFT, Ludhiana reported in 2006 (199) ELT 213 (P&H). It was however, a case

where the petitioners themselves had imported duty free item on the basis of DEPB allowance which was found to have been fraudulently obtained. It was in this background that the Court held that same would tantamount to contravention of provisions of Foreign Trade (Development and Regulation) Act, 1992. Penalty imposed was thus upheld.

3. Reliance was also placed on decision of Punjab and Haryana High Court in case of Friends Trading Co. v. Union of India reported in 2010 (254) ELT 652 (P&H), wherein again DEPB scrips were found to have been obtained by producing false documents. There again the person claiming the duty exemption was the same as one who was found to have committed fraud.

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.

14.1 We may also notice that department has issued notice to the original firms namely M/s Amar Enterprises and M/s Hanikrishna Enterprise for recovery of duty and penalty. This would thus show that department is pursuing the original entities for recovery of cenvat credit wrongly claimed whereas on other hand it is denying rebate claim of the manufacturer exporters. We may also notice that against M/s Unique exporters, no proceedings have been initiated.

14.2 We may also record that though counsel for respondent M/s Roman Overseas contended that without cancellation of cenvat credit granted to M/s Unique Exports, rebate claimed by respondent M/s Roman Overseas cannot be raised by respondent M/s Roman Overseas in facts of the present case. As already noted, before the competent authority the stand of respondent M/s Roman Overseas was clear that fraud was not disputed, but that respondent M/s Roman Overseas was not part of such fraud and that all reasonable care was taken to ensure that goods were duty paid.

15. Before dosing, however, we may reiterate that the facts in present case are peculiar. Had there been any allegations and evidence to show that respondent M/s Roman Overseas was either part of the fraud in nonpayment of excise duty or had knowledge about the same or even had failed to take care as envisaged under sub-rule(2) of Rule 7 of the Cenvat Credit Rules, situation would have been different. In the present case, when no such facts emerge, we have no hesitation in confirming the view of the Government."

8.4 Government notes that applicability of G.O.I. order dated 18.05.07 in the case of Shree Shyam International has been categorically upheld by Hon'ble High Court. It is also mentioned here that in the case of CCE Mumbai- I Vs. Rainbow Silk Mills, Hon'ble High Court of Bombay vide order dated 27.06.11 in W.P. 3956/10 reported as 2011 (274) ELT 501 (BOM) has also expressed similar view and has not questioned Government decision in the G.O.I. order No. 304-307/07 dated 18.05.07 in the case of Shree Shayam International. In the instant case, the applicant merchant exporter was party to the fraudulent avilment of cenvat credit by the manufacturers on the basis of invoices issued by bogus grey fabrics suppliers and therefore, in the light of above said judgement of Hon'ble High Court the instant

rebate claims were rightly held inadmissible to the applicants. It is pertinent to mention here that SLP filed by department against said order of Gujarat High Court was dismissed by Hon'ble Supreme Court vide order dated 02.12.2011.

9. Now Government proceeds to examine the revision application No.195/1461/12-RA (order-in-appeal No.US/499/RGD/12 dated 21.08.12) pertaining to 58 rebate claims of Rs.8061603.

9.1 Government observes that original authority has observed that full exemption was available under Notification No.30/04-CE dated 9.7.04 and manufacturer had to avail said exemption on exported goods; that Chapter Sub-heading mentioned the CX invoice not tallying with chapter sub-heading declared in the Shipping Bill; that genuineness of Duty payment has not been submitted from the Central Excise Authority indicating the debit entries and verification of input stage credit on the raw material; that Bank Realisation Certificate not submitted in some cases; that Name & designation of the Authorised Signatory was not mentioned; that date & time of removal of goods not mentioned on the ARE-1; that Date of issue of ARE-1 is different and subsequent to the date of issue of CX invoice and date of removal of goods (i.e. ARE-1's are prepared on subsequent dates) that Short Shipment of goods and that one claim was submitted after expiry of time and so it was time barred. The appellate authority has discussed each ground of rejection of rebate claim in his order and dropped most of the said grounds except the grounds of time barred claim, non-payment of duty and non-verification of duty payment particulars. The rebate claim No.19888 dated 7.12.07 in respect of ARE-1 dated 20.6.06 filed after lapse of one year's time limit as stipulated under Section 11B of Central Excise Act was rightly held inadmissible. Similarly in respect of short shipment due to lack of space in container the rebate is admissible only to the extent of duty paid on goods exported.

9.2 On perusal of order-in-appeal No.US/499/RGD/12 dated 21.08.12, it has been observed that the appellate authority upheld the Order-in-Original mainly on the grounds that DGCEI investigation revealed that the duty was paid on exported goods out of cenvat credit wrongly availed by the processor on the strength of bogus/fake

invoices and also that applicant failed to prove the genuineness of duty payment and veracity of the input stage credit. Government observes that DGCEI carried out detailed investigation with reference to all the pending rebate claims and issued SCN No.Inv/DGCEI/BRU/13/2010/1350 dated 2.12.2010 to the applicant for denying rebate claims discussed in para (8) above on the ground that two processors M/s Agarwal Textile Mills, Surat and M/s Swastik Poly Prints Pvt. Ltd., Surat availed cenvat credit on strength of bogus invoices raised by five bogus/non-existent suppliers of grey fabrics namely M/s Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles. The said show cause notice has various annexures viz. A, B1, B2, B3, B4, B5, C1, C2, D1, D2 wherein details of bogus as well as genuine suppliers of grey fabrics is given. The gist of such details as contained in various annexures is as under:

S.No.	Annexure	Details of content
	A	The details of the rebate claims filed by M/s Akshita Exports, Surat wherein the purported grey suppliers are M/s Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles
	B1	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports from M/s Shivam Textiles, Surat and credit taken by their processors in RG23A pt.I&II
	B2	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports from M/s Balaji Silk Mills, Surat and credit taken by their processors in RG23A pt.I&II
	B3	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports from M/s Surya Narayan Textiles, Surat and credit taken by their processors in RG23A pt.I&II
	B4	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports from M/s Hindustan Garments, Surat and credit taken by their processors in RG23A pt.I&II
	B5	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports from M/s Shree Sai Textiles, Surat and credit taken by their processors in RG23A pt.I&II
	C1	Worksheet showing details of credit fraudulently availed by M/s Agarwal

		Textile Mills, Surat.
	C2	Worksheet showing details of credit fraudulently availed by M/s Swastik Poly Prints Pvt. Ltd., Surat.
	D1	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports, Surat and sent to M/s Agarwal Textile Mills, Surat.
	D2	Worksheet showing the details of grey fabric purchased by M/s Akshita Exports, Surat and sent to M/s Swastik Poly Prints Pvt. Ltd., Surat.

9.3 On perusal of above details, Government finds that list of all grey fabrics suppliers have been given in Annexures D1 and D2. Out of these suppliers, only five suppliers found bogus and non-existent have been named in Annexure-A and Annexures B1, B2, B3, B4 and B5. These five grey fabric suppliers are M/s Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles. Further, name of only these five grey suppliers are mentioned in Annexures-C1 and C2 where in two processors viz. M/s Agarwal Textile Mills and M/s Swastik Poly Prints Pvt. Ltd. alleged to have availed Cenvat Credit on the strength of bogus invoices of said five supplier. As such, Annexures-A, B1, B2, B3, B4, B5, C1 & C5 categorically shows that these five firms are only found to be bogus/non-existent as per said SCN dated 2.12.2010. There is neither any conclusion in the said SCN to the effect that suppliers other than above 5 suppliers are non-existent/bogus nor the same has been stated as bogus on the basis of any other evidence. The SCN dated 2.12.2010 was issued for rejection of rebate claim of Rs.5302057/- wherein the goods were supplied by said five grey fabric suppliers only. Government notes that DGCEI after examining all the records of *all* rebate claims issued one SCN dated 2.12.10 for rejection of rebate claim of Rs.5302057 and issued second SCN dated 2.12.10 for recovery of wrongly availed cenvat credit in respect of grey fabrics supplied by above said 5 bogus/fake suppliers. DGCEI on investigation did not find any irregularity with reference to said 58 rebate claims of Rs.8071603. No other show cause notice reported to have been issued in case of cenvat credit availed by processors M/s Swastik Poly Prints Ltd. And M/s Agarwal Textile Mills, where goods were supplied by other grey fabric suppliers mentioned in annexure D1 and D2 other than said five suppliers. The adjudicating authority has not brought on record any

evidence to state that other suppliers of grey fabrics were also fake or bogus. The instant 58 rebate claims of Rs.8071603 do not relate to exported goods which were procured from 5 bogus suppliers. But these claims pertain to exported goods relating to grey fabrics supplied by other grey suppliers mentioned in Annexures D1 & D2 of SCN which was found genuine suppliers as per DGCEI investigations. Government finds that in this case since duty has been paid from valid cenvat credit and therefore, the ratio of Hon'ble Bombay High Court's order dated 27.06.2011 in W.P. 3956/10 reported as 2011 (274) ELT 501(BOM) in case of M/s Rainbow Silk wherein the claimant was also a party to fraud cannot be made applicable to this case. In view of above position, Government notes that in these cases duty was paid on exported goods from the valid cenvat credit and lower authorities have erred in giving an erroneous finding of treating the cenvat credit availed in these cases as wrong credit without any basis. The findings of lower authorities are also contrary to the outcome of DGCEI investigation whereunder the said 58 rebate claims were found in order as regards payment of duty on the exported goods. As such payment of duty on said exported goods cannot be called illegal or irregular since the cenvat credit was availed as per law on the basis of valid duty paying documents issued by genuine existing grey fabrics suppliers.

9.4 As regard genuineness of duty payment certificates, the original authority has observed that genuineness of duty payment and verification of input stage credit of raw material (i.e. grey fabric) is not on record in any of the rebate claims filed by the merchant exporter. The applicant in this regard stated that they submitted before the Commissioner (Appeals) that duty payment certificates were verified by the jurisdictional excise officers and were sent to rebate sanctioning authority and that though, the said certificates were found missing in the file of department the same were brought on record by obtaining the same under RTI application.

9.5 Government notes that original authority has not stated that duty payment certificates (DPC) were not submitted by the applicant. The SCN dated 15.12.11 issued for rejection of said claims has also not pointed out anything about non-submission of said DPCs. The adjudicating authority has simply stated that DPC are

not available in rebate claim files. The said SCN dated 15.12.11 had pointed that the genuineness of duty payment has not been submitted from Central Excise Authority.

9.6 On perusal of copy of documents submitted along with applicant's written submissions dated 27.09.2013, Government finds that Central Excise Superintendent of Range-I, Division-II, Surat-I vide letter F.No.R-I/Div-II/Akshita Exports/06-07/4027 dated 17.12.2007 addressed to the Assistant Commissioner (Rebate) Raigarh i.e. the original authority, has categorically stated as under:-

"DPC Certificate already issued after verification of grey fabrics i.e. input in terms of the instruction No. 08/2005 and the same was Found In Order."

The above said letter was addressed to the Assistant Commissioner(Rebate), Raigad in response to their letter F.No. V/15/REB/Akshita Export/Rgd/07/146681 Nov. 2007. Since, the said letter was addressed to the Assistant Commissioner (Rebate), the same should be available with original authority. Further said letter clearly show that DPCs mentioned in above letter dated 17.12.2007 were in order.

9.7 Government finds that in another letter F.No. AR-V/Rebate/Veri-Akshita/2011-12 dated 13.10.2011, Superintendent of Central Excise, Range-V, Div.-I, Surat-I addressed to the Deputy Commissioner(Rebate), Raigarh in response to their letter F.No. V-15/Rebate/WP/Akshita/RGD/11/7627 dated 08.09.2011 stated as under:-

"On going through the above referred letter dated 08.09.2011 of the Deputy Commissioner (Rebate), Central Excise, Raigad, it is to report that as per the old records available with this office the authenticities of payment of duty in respect of ARE-1 Nos. as shown in your above referred letter bearing Sr. No. 01 to 19 (except Sr. No. 2 not traceable) verification of input stage CENVAT credit upto grey stage verified in Annexure-'D' and genuineness of the input invoices of the grey fabrics confirmation, it is seen that the then Superintendent & Inspector, Central Excise, Range-V, Division-I, Surat-I has verified the same through Annexure-'D' and issued the Duty Payment Certificates at the material time and copy of which dully attested is forwarded herewith as per the list provided by you for your ready reference and further necessary action at your end please.

Accordingly, it is seen that necessary verification in the matter has been undertaken by the then Superintendent and Inspector at the material time and issued the verification report as shown in duty paid certificate."

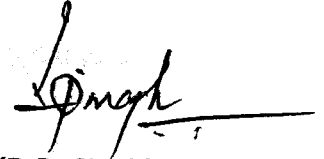
From above, it is evident that the verification of DPCs has been communicated by jurisdictional range officer to the rebate sanctioning authority in 2011 also. The same should have been available in file of rebate sanctioning authority. It pertinent to mention that in this case Hon'ble High Court had directed vide order dated 1.8.11 in W.P.No.5878/11 the rebate sanctioning authority to decide the rebate claim within six months time. In the light of said directions of Hon'ble Court the sanctioning authority ought to have handled the case more diligently and was required to obtain the requisite verification of DPCs from concerned Central excise authorities within stipulated time. These documents obtained through RTI replies by applicant establish the verification and re-verification of DPCs and confirmed payment of duty on said goods. Further, applicant submitted information gathered in RTI replies before Commissioner (Appeals), however, the Commissioner (Appeals) has not given any findings on the same while rejecting the applicant's appeal. Veracity of such DPCs obtained through RTI can not be simply brushed aside. Applicant had submitted the duty payment certificate, the jurisdictional Central Excise Authorities had issued verification report in 2007 and 2011. Department cannot reject the legitimate claims by simply saying that said documents are not in rebate claim files. Such type of callous approach is absolutely unwarranted. Despite the directions of Hon'ble High Court, the original authority has adopted a very casual approach in the matter and rejected the claims just for non-availability of DPCs verification in files. They could have again called the same from jurisdictional range officer. The original authority has erred in rejecting the rebate claim on this ground without making genuine effort to obtain the verification of DPCs, from jurisdictional Central Excise authorities pertaining to rebate claims of Rs.80,71,603/-, which applicant has procured under RTI and submitted before Commissioner (Appeals). As per copies of verification/re-verification reports of DPCs submitted by Central Excise Superintendent, Surat, the payment of duty is confirmed and established. Therefore the rebate claims are to be held admissible under Rule 18 of Central Excise Rules 2002 read with Notification

No.19/04-CE dated 6.9.04 provided the said verification reports in respect of DPCs are found genuine and ingenuine.

10. In view of above discussions, Government finds no infirmity in order-in-appeal No.US/500/RGD/12 dated 22.8.12 and upholds the same. The Revision Application No.195/1462/12-RA is therefore rejected being devoid of merits. Further, Government sets aside Order-in-Appeal No.US/499/RGD/12 dated 21.08.2012 and allows the Revision Application No.195/1461/12-RA with the consequential relief subject to the condition that the copies of verification reports in respect of duty payment certificates submitted by applicant after procuring the same under RTI reply from jurisdictional Central Excise Range Superintendent are found genuine on verification by original authority. The applicant is directed to submit all the said documents relating to payment of duty before original authority within a week's time of this receipt of this order. The original authority will complete the requisite verification expeditiously in a time bound manner and sanction the rebate claim within one month of receipt of said documents from applicant if the same are found in order on verification.

11. So, ordered.

M/s Akshita Exports
701, 7th Floor, Metro Tower,
Near Kinnari Cinema
Ring Road
Surat-395002



(D.P. Singh)

Joint Secretary (Revision Application)



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

Order No. 1370 - 1371 /2013-Cx dated 11.11.2013

Copy to:

1. Commissioner of Central Excise & Customs, Raigad Commissionerate, 4th Floor, Kendriya Utpad Shulk Bhawan, Sector 17, Plot No.1, Khandeshwar, Navi Mumbai - 410 206
2. Commissioner of Central Excise (Appeals-II), Mumbai Zone, 3rd Floor, Utpad Shulk Bhawan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra(East), Mumbai-400 051.
3. The Deputy Commissioner of Central Excise (Rebate), Raigad, Office of the Maritime Commissioner, Ground Floor, Kendriya Utpad Shulk Bhawan, Sector-17, Plot No. 1, Khandeshwar, Navi Mumbai - 410 206
4. Shri K.I.Vyas, Advocate, 401, Shivanjali Apartment, Rangila Park, Ghod Dod Road, Surat
5. PA to JS (RA)
6. Guard File
7. Spare copy

ATTESTED



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