

REGISTERED SPEED POST AD



**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

F. No. 195/483/11-RA / 5767

Date of Issue: 12/12/19

ORDER NO. 146/2019-CX (WZ) /ASRA/MUMBAI DATED 05.11.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT.SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Suchi Fashion Industries Pvt. Ltd.  
8004, World Trade Center,  
Near Udhna Darwaja,  
Ring Road, Surat

Respondent: Commissioner, Central Excise, Mumbai-I

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the OIA No. M-I/RKS/37/2011 dated 01/08.02.2011 passed by the Commissioner (Appeals), Central Excise, Mumbai-I.

**ORDER**

These revision applications have been filed by M/s. Suchi Fashion Industries Pvt. Ltd., 8004, World Trade Center, Near Udhna Darwaja, Ring Road, Surat (hereinafter referred to as "the applicant") against OIA No. M-I/RKS/37/2011 dated 01/08.02.2011 passed by the Commissioner (Appeals), Central Excise, Mumbai-I.

2.1 The applicant had filed rebate claims in respect of goods manufactured by M/s Global Enterprises & had exported through Mumbai Port as per details below.

Sr. No.	RC No./Date	ARE 1 No./Date	Amount
1	372/30.03.2006	54/13.03.2005	2,38,682/-
2	373/30.03.2006	52/12.03.2005	96,090/-
3	374/30.03.2006	53/12.03.2005	1,29,578/-
4	375/30.03.2006	55/14.03.2005	1,74,064/-
		Total	6,38,414/-

It was observed by the Superintendent, Central Excise, Range-IV, Kalyan-I Division, Thane-I Commissionerate vide his letter F. No. C.Ex/R-IV/K-I/Global/2005 dated 02.02.2006 that the debits made by M/s Global Enterprises, Bhiwandi were made out of unlawful CENVAT credit availed by them and rebate claims filed by the merchant exporters were erroneous and merited recovery under the provisions of Section 11A of the CEA, 1944.

Accordingly an SCN was issued to the applicant on 03.05.2006 calling upon them to show cause as to why the rebate claims totally amounting to Rs. 6,38,414/- should not be rejected under the provisions of Rule 18 of the CER, 2002 and notifications issued thereunder. On scrutiny of the claim it was noticed that export of goods in respect of rebate claim no. 372 dated 30.03.2006 amounting to Rs. 2,38,682/- was effected from JNPT and therefore the said rebate claim was forwarded to the Assistant Commissioner(Rebate), Raigad for further processing.

2.2 The adjudicating authority observed that rebate of central excise duty is a beneficial legislation where the benefit/exemption is dependent upon satisfaction of certain conditions complied with, even if such conditions are only directory. He further observed that in case of rebate claims, the conditions are not directory but are mandatory and in the absence of all the documents, the rebate sanctioning authority must arrive at the required satisfaction of two elements; i.e. the actual export of the goods and their duty paid character. He took note of the letter of the Superintendent, Central Excise, Range-IV, Kalyan-I Division, Thane-I vide F. No. C.Ex/R-I/K-I/Global/2005 dated 02.02.2006 stating that the debits made by the manufacturer were out of the unlawful CENVAT credit availed by the manufacturer and therefore the rebate claims filed by the applicant were erroneous refund. Since the duty paid character of the exported goods could not be established, the adjudicating authority rejected the rebate claims filed by the applicants vide OIO No. 412/R/2006 dated 31.07.2006.

3. Aggrieved by the OIO dated 31.07.2006, the applicant filed appeal before the Commissioner(Appeals). Commissioner(Appeals) referred the judgment of the Hon'ble Gujarat High Court in the case of Sheela Dyeing & Printing Mills Pvt. Ltd. vs. CCE, Surat[2008(232)ELT 408(Guj)] wherein it was held that it was for the assessee to take reasonable steps to ensure the identity and address of the suppliers. The Commissioner(Appeals) found that the maxim of "Caveat Emptor" meaning "Let the purchase beware" was clearly applicable to this case as the purchaser was bound by actual as well as constructive knowledge of any defect in the thing purchased, which was obvious or which might have been known by proper diligence. He further observed that the applicant had failed to submit the triplicate copies of the ARE-1's in sealed cover duly certified by the Range Superintendent to prove the duty paid character of the exported goods. He averred that when triplicate copy of ARE-1 is endorsed as "duty payable", separate duty payment certificate in a sealed cover was a must. As the applicant had failed to submit the triplicate copies of

the ARE-1's and duty payment certificate from the jurisdictional Range Superintendent, the Commissioner(Appeals) held that such exported goods could not be said to be proper duty paid goods. He further held that the CBEC Circular No. 766/82/2003-CX dated 15.12.2003 was not applicable to the present case as the issue of reversal of CENVAT credit was not the issue in the present case. The issue involved in the present case was grant of incentive by way of rebate of duty borne on exported goods. The Commissioner(Appeals) further observed that the debits made by the manufacturer of the goods exported; i.e. M/s Global Enterprises, Bhiwandi were from unlawful credit availed by them and such CENVAT credit utilized for making payment of duty for clearance of goods for export against such unlawful credit is nothing but clearance of goods without payment of duty. He therefore held that the goods exported cannot be considered to be proper duty paid goods. In the light of these findings, the Commissioner(Appeals) vide OIA No. M-I/RKS/37/2011 dated 01/08.02.2011 upheld the OIO dated 31.07.2006 passed by the Assistant Commissioner(Rebate), Central Excise, Mumbai-I and rejected the appeal filed by the applicants.

4. Aggrieved by the OIA, the applicant has filed Revision Application on the following grounds:

- (a) The Commissioner(Appeals) had erred in passing the impugned order without taking the written submissions dated 01.01.2011 & judgments cited into consideration.
- (b) Commissioner(Appeals) had failed to appreciate that it was the duty of the Range Superintendent to forward the duplicate copy of ARE-1 and duty payment certificate in sealed cover to the rebate sanctioning authority & not the duty of the merchant exporter.
- (c) The Commissioner(Appeals) had failed to appreciate that action was to be taken against the manufacturer supplier M/s Global Enterprises and not against the merchant exporter.

- (d) The issue had already been settled by the decision in the case of Shree Shyam International vide Order No. 304-307/07 dated 18.05.2007 passed by the Joint Secretary, Revision Application by relying on the judgment of the Delhi High Court in the case of R. S. Industries whereby the application of the Department was rejected by the Revisionary Authority and that decision had been accepted by the Department.
- (e) The Commissioner(Appeals) had failed to appreciate that the merchant exporter had purchased ready goods from the manufacturer, those goods had been exported and foreign remittance had been received. On an identical issue, in the case of Roman Overseas, Special Civil Application filed by the Department against the Order of the Joint Secretary, Revision Application had been rejected by the High Court. In this view, the issue had been finally settled by the Gujarat High Court.
- (f) It was the duty of the Commissioner(Appeals) to do justice based on evidences produced and judgments cited but the Commissioner(Appeals) had simply relied upon the findings of the adjudicating authority and upheld the adjudication order.
- (g) In para 8 of Commissioner(Appeals) order, it is stated that the Advocate of the appellant had appeared and submitted written submissions. However, these submissions have not been taken on record and no findings have been given.
- (h) The Commissioner(Appeals) had ignored the submissions dated 01.01.2011 whereby the applicant had requested to extend inquiry in terms of Section 35A(3) of the CEA, 1944 in terms of the powers vested in him for verifying the triplicate copy of the ARE-1 & the duty payment certificates. However, the Commissioner(Appeals) ignored the request and passed orders without taking note of these submissions.

- (i) The applicant had stated in his submissions dated 01.01.2011 that the supplier manufacturer had made duty payment in terms of Rule 8 of the CER, 2002 & had not been issued default notice. Therefore, there was no cause to disbelieve the genuineness of duty payment.
- (j) There was no dispute about receipt of duty paid goods under the relevant ARE-1's being exported, foreign remittance having been received and duty payment by applicant as merchant exporter. Hence, there was no cause to deny the rebate claims.
- (k) The issue involved had already been settled by the Hon'ble Gujarat High Court in SCA No. 16269 of 2010, 814 of 2011, 16270 of 2010, 16271 of 2010 & 16304 of 2010 vide Order dated 31.03.2011 in the case of Roman Overseas and Others. Therefore there was no cause to deny the rebate claims.
- (l) Since Commissioner(Appeals) had passed order ignoring the written submissions and evidences on record, in disregard of settled law resulting in huge monetary loss in the form of interest to the applicant, they prayed that they be awarded a cost of Rs. 35000/- which should be recovered from Commissioner(Appeals) in the interest of justice.

5. The applicant made additional submissions on 03.03.2013. While reiterating the grounds made in their revision application, the applicant stated that they had received duty paid invoices from M/s Global Enterprise, Bhiwandi and the goods and invoice are not under challenge and have been accepted by the adjudicating authority. They stated that M/s Global Enterprise had paid duty on the said invoices in the month of March 2005 and have also filed monthly return with the Range Superintendent. These facts were not under challenge and therefore the duty paid nature of the goods was also not under challenge. They submitted that action could be taken against M/s Global Enterprises as held by the Gujarat High Court in their final order in the case of Prayagraj Dyeing and Printing Mills in Tax Appeal No. 630 of 2010 vide Order

dated 16.03.2011. They therefore asserted that the finding of the adjudicating authority and the Commissioner(Appeals) that M/s Global Enterprises had taken credit wrongly and therefore rebate was not permissible to the merchant exporter is not sustainable. They further stated that as far as export by merchant exporter who have purchased ready goods is concerned, the issue had been finally settled by the Gujarat High Court and the Supreme Court in the case of Roman Overseas which had been accepted by the Revisionary Authority. With regard to the ground of triplicate copy of ARE-1 not being received by the rebate sanctioning authority recorded by the adjudicating authority, the applicant stated that para 6.3 of Chapter 6 of the CBEC Manual states that the Superintendent is required to forward triplicate copy of ARE-1 directly to the rebate sanctioning authority and it was not the responsibility of the merchant exporter. This fact has been accepted by the Revisionary Authority while passing order in the case of Guria Textiles and Others vide Order No. 1605-1615/12-CX dated 20.11.2012.

6. The applicant was granted opportunity of personal hearing on 19.12.2017, 10.12.2018, 11.12.2018 and 19.08.2019. However, they failed to appear for the hearing. The applicant has also not filed any submissions, request for adjournment.

7. Government observes that there is a delay of 19 days in filing revision application. The applicant had requested for time for filing application for condonation of delay. However, ~~they are~~ yet to file any such application. Albeit, Government in the interest of justice condones the delay in filing revision application since it is well within condonable limits.

8.1 The issue involved under the present revision application is that the applicant had failed to submit the triplicate copies of the ARE-1's alongwith the rebate claims and that the debits for payment of duty on the exported goods made by the manufacturer of the goods which were exported by the applicant were made out of unlawful CENVAT credits availed by them.

Government observes that the alleged failure on the part of the applicant to submit triplicate copies of ARE-1's cannot be a valid ground for withholding rebate claim. The responsibility to forward the triplicate copy of the ARE-1 to the rebate sanctioning authority by post or by handing it over to the exporter in a sealed cover is on the jurisdictional Superintendent. The triplicate copy of ARE-1 is required to be certified by Range Superintendent regarding duty payment and forwarded to Assistant Commissioner Central Excise. The factual position regarding certification by Central Excise Range Superintendent has not been brought on record. Therefore, this aspect would be required to be verified by the rebate sanctioning authority.

8.2 With regard to the allegation that the duty paid on the exported goods has been debited by M/s Global Enterprises out of irregular CENVAT credits availed by them, Government observes that this finding recorded by both the lower authorities is a mere statement without any evidence to substantiate it. Government notes that there is nothing on record to show that there was any further investigation/issuance of show cause notices, confirmation of demand of irregular CENVAT Credit etc. by the concerned Commissionerate against M/s Global Enterprises. Such verification by the original authority is necessary to establish whether the CENVAT credit availed & subsequently utilized by the manufacturer for payment of duty towards the above exports was genuine or otherwise. Surely there cannot be unilateral action on the buyer of the goods. The impugned Order-in-Appeal and Order-in-Original lack appreciation of evidence and hence are not legal and proper.

9. In view of above discussion, Government modifies impugned Order-in-Appeal to the extent discussed above and remands the case back to the original authority for causing verification as stated in foregoing paras. The applicant is also directed to submit all the export documents with respect to all concerned ARE-1s, BRC, duty paying documents etc. for verification. The original authority will complete the requisite verification expeditiously and pass a



speaking order on receipt of said documents from the applicant after following the principles of natural justice.

10. Revision application filed by the applicant is disposed off in above terms.

11. So ordered.

  
( SEEMA ARORA )

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

ORDER No. 146/2019-CX (WZ) /ASRA/Mumbai DATED 05.11.2019

To,

M/s. Suchi Fashion Industries Pvt. Ltd.  
8004, World Trade Center,  
Near Udhna Darwaja,  
Ring Road, Surat

Copy to:

1. The Commissioner of CGST & CX, Mumbai South Commissionerate.
2. The Commissioner of CGST & CX, (Appeals-I), Mumbai.
3. Sr. P.S. to AS (RA), Mumbai
- ~~4. Guard file~~
5. Spare Copy