

REGISTERED SPEED POST



**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
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005**

F. NO. 195/537/11-RA

Date of Issue: 12/02/20

ORDER NO. 148 /2020-CEX (WZ) /ASRA/MUMBAI DATED 3.2.2020 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.

Applicants : M/s Sameer Exports, Surat.

Respondent : Commissioner of Central Excise, Customs & Service Tax, Surat-I

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. RKA/147/SRT-I/2011 dated 23.03.2011 passed by the Commissioner (Appeals), Central Excise & Customs , Surat-I.

ORDER

This Revision Application has been filed by M/s. Sameer Exports, Raghukul Textile Market Market, Ring Road, Surat (hereinafter referred to as the "applicant"), against Order-in-Appeal No. Order-in-Appeal No. RKA/147/SRT-I/2011 dated 23.03.2011 passed by the Commissioner (Appeals), Central Excise & Customs, Surat-I.

2. The brief facts of the case are that the applicant had filed eight rebate claims totally amounting to Rs. 15,08,925/- (Rupees Fifteen Lakh Eight Thousand Nine Hundred Twenty Five only) for the goods exported i.e. MMF (100%Polyster PTD Fabrics) on payment of Central Excise Duty. On scrutiny of the said rebate claims it was noticed that the applicant had procured the goods from M/s Ashish Dyg. & Ptg. Ltd. , Vareli, Palsana, Surat.

3. A large scale scam was unearthed in the Surat-I Commissionerate regarding fraudulent rebate claims where the exporters had submitted bogus shipping bills, ARE 1 documents. During, the investigation of rebate claims another major modus-operandi had also been detected and it had been noticed that number of persons who had obtained the registrations as manufacturers had issued hundreds of Central Excise duty paying invoices, without any movement of goods and in fact no goods were sold by them. Based on such bogus duty paying documents, number of parties had availed and claimed the Cenvat Credit and part of which had found its way in rebate claims also. Considering a huge revenue involvement running in to crores of ruppess due to issue of fake/bogus excise invoices it was felt necessary that before sanctioning rebate claims, inquiry should be made regarding genuineness of the manufacturer and the input invoices which Cenvat Credit had been availed and duty paid.

4. The Superintendent, Central Excise Range-III, Div.-II, Surat-I vide his letter No AR-II/Rebate/Sameer Export/08-09 dtd.31.12.2008 reported that as per the name of the weavers (grey supplier) and grey invoices submitted by the Exporter against this rebate claim, they had earlier sent the Annexure 'D' verification of the duty payment particulars and genuineness of the grey supplier to the concerned Range. Further, he informed that as per concerned R.O 's Annexure-D verification report dated 16.05.2008, the grey supplier i.e.

M/s. Tajus, Block no.660, Plot No 660-A, GIDC. Palsana, Dist.Surat does not have any weaving machine / Loom machines etc. The unit had purchased grey from M/s. Orange Polymers Ltd., Palsana, Surat. The concerned R.O. has called the records for verification, but party has failed to produce the records and therefore the relevant credit taken by the processor i.e. M/s. Ashish Dyg.& Ptg. Mills Pvt. Ltd., Plot No.48, R.S.No.65. at Vareli, Tat. Palsana, Dist.Surat may be disallowed and also verification of the yarn stage is not possible. Since, the grey stage verification as per Hon'ble Commissioner's amendment to Instruction No. 8/2005 dtd.03.02.05 issued from F. No.IV/12-HPIU-IV/10/2005 dtd.17.05.05 could not be completed for want of documents from the exporter/grey supplier, the genuineness of duty payment at grey stage is not ascertained in respect of above said unit. Hence, the above rebate claim may be rejected.

5. Therefore, the applicant was issued eight Show cause notices (for eight rebate claims) proposing to reject the said rebate claims. After due process of law, the Original Authority vide Order in Original No. SRT-I/Div II/36/10-11/Reb dated 15.10.2010 rejected rebate claims amounting to Rs. 15,08,925/- holding that he was not satisfied with the duty paid character of the goods which have been shown as exported with the correctness of rebate claims. Aggrieved by such order, the applicant filed appeal before the Commissioner (Appeals), Central Excise & Customs, Surat-I.

6. Commissioner (Appeals) vide impugned Order observed that the appellant failed to produce the documents for duty payment and also failed to prove the genuineness of the transaction. Further, ~~the Original authority~~ has passed the order against M/s Surbhi International, 5029, Trade House, Ring Road, Surat and no order is passed against Exporter claimant and other persons to whom notice was issued. He further observed that a large scale fraud has taken place at Surat where fraudulent credit is availed on invoices of fictitious persons and considering all aspects it will be appropriate that the order is set aside and matter is sent back to the original authority to examine the facts properly and pass speaking order afresh after taking on records, the various defences of the notices and disposed off the appeal accordingly.

7. Being aggrieved with the aforesaid Orders-in-Appeal, the applicants have filed these Revision Applications (covering 16 Orders in Originals at Column 4 of Table at para 1 above) mainly on the following identical grounds:

- 7.1 The Commissioner (Appeals) have no power to remand the case to the adjudicating authority and therefore the order passed by Commissioner (Appeals) is bad in law and required to be set aside.
- 7.2 The Commissioner (Appeals) has failed to consider the material point of law that the order was passed against M/s Surbhi International, 5029, Trade House, Ring Road, Surat and not against the applicant and therefore the order passed by the was bad in law and is required to be set aside.
- 7.3 Since the Commissioner (Appeals) has remanded the case to the adjudicating authority without authority of law, all the grounds taken before the said authority may please be decided in the present appeal to avoid the multiple hearings before adjudicating authority and Commissioner (Appeals) as the issue is finally settled by the High Court and Revision Authority on the subject issue of rebate in the case of merchant exporter.
- 7.4 The has grossly erred in rejecting rebate claims solely on the ground that the processor manufacturer had availed credit wrongly which is not the cause for supply of the duty paid processed fabrics by the said processor to reject the rebate claims.
- 7.5 The issue of the rebate claims to the merchant exporter have been settled by the Gujarat High Court in the case of Roman Overseas and others in SCA No.16269 of 2010 decided on 31.03.2011 Inview of this also, order passed by the as well as Commissioner (Appeals) is bad in law and are required to be set aside.
- 7.6 When Supdt. Central Excise reported Annexure D Verification and it was found that grey supplier i.e. M/s. Tajus, Block no.660, Plot No 660-A, GIDC. Palsana, Dist.Surat does not have any weaving machine / Loom machines etc. and the said unit had purchased grey from M/s. Orange Polymers Ltd., Palsana, Surat and the said Supdt. Could not verify the records of the said M/s Orange Polymers Ltd., the notice was required to be issued to the said processor manufacturer and not the exporter. In view of this the entire SCN and proceedings based on wrong footings is required to be set aside.
- 7.7 They had exported goods on the basis of invoices issued M/s Ashish Dyg. & Ptg. Ltd. who had paid central excise duty on the said goods which can very well verify from monthly returns filed by them during August 2007 to October 2007 and payment made by them under Rule 8 of Central Excise Rules, 2002is not under challenge and therefore there is no cause to deny the rebate claims.
- 7.8 The entire issue is settled in the case of here Shyam International vide Order No.304-307/07 dated 18.05.2007 wherein the entire issue alleged in the SCN is covered. In view of this the order of the is not sustainable in law.

7.9 The issue involved is decided by the Hon'ble High Court in the case of R.S. Industries [2008 (228) E.L.T. 347 (Del.)] and therefore there is no cause to take any adverse view or to pass order rejecting the rebate claims and therefore the findings of the is total non application of mind and the said order is prayed to be set aside with consequential relief.

8. Personal hearing was scheduled in this case on 21.11.2017, 27.12.2017, 10/11.12.2018 and 19.08.2019, however neither the applicant nor its Advocate on record appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing again. Hence Government proceeds to decide the case on merits on the basis of available records. Government observes that there was a delay of 7 days in filing the present revision applications by the applicant. The applicant in its application for condonation of delay has contended that the impugned Order dated 23.03.2011 was received by them on 28.03.2011 and they were required to file appeal on or before 27.06.2011. They prepared the appeal and sent it by Speed Post on 25.06.2011 (Saturday) and therefore the appeal did not reach from Surat to Delhi in time by post. In view of this, the applicant prayed for condonation of delay of arisen in reaching the appeal in RA office, Delhi. Since, the applicant filed this revision application 7 days after the initial 90 days period, which falls within condonable limit of 90 days, Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

9. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

10. With regard to Commissioner (Appeals) powers to remand the case in terms of Section 35A(3) of the Central Excise Act,1944 that the issue is now well settled that remand powers of Commissioner (Appeals) have been withdrawn w.e.f. 11-5-2001 as per above said amendment in Section 35A(3) *ibid*. It is not in dispute that the Commissioner (Appeals) did not have the power of remand when he passed the impugned order. However, there will be nothing wrong in ascertaining whether the reasons recorded by the Commissioner (Appeals) for a remand of the case to the original authority are valid or not. In this context, Government notes that the in the operative part of the Order in Original the Original authority has ordered as under:-

(1) I hereby reject the amount of rebate of Rs.15,08,925/- (Fifteen Lakh Eight Thousand Nine Hundred Twenty Five Only) related to the Cenvat Credit rule 18 of Central Excise Rules, 2002 read with section 11 B of the Central Excise Act, 1944 filed by M/s Surbhi International, 5029, Trade House, Ring Road Surat.


Hence, the Commissioner (Appeals) has rightly observed in the impugned order that the Original authority has passed the order against M/s Surbhi International, 5029, Trade House, Ring Road, Surat and no order is passed against Exporter claimant and other persons to whom notice was issued.

11. Government, therefore is of the considered opinion that the instant case is fit for remand to the original authority for appropriate corrective action inasmuch as Order-portion-of-Order in Original No. SRT I/Div II/36/10-11/Reb dated 15.10.2010 mentions altogether a different entity than those to whom the show cause notices were issued.

12. Government therefore, in exercise of powers under Section 35EE of the Central Excise Act, 1944 remands the case back to the original authority for denovo adjudication as stated above. The original authority will complete the adjudication expeditiously and pass a speaking order within six weeks of receipt of this order and following the principles of natural justice.

13. The Revision Application is disposed of in the above terms.

14. So ordered.


(SEEMA ARORA)

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

ORDER No. 148 /2020-CEX (WZ) /ASRA/Mumbai Dated 03.02.2020

To,
M/s. Sameer Export,
B-5112, 3rd Floor, Raghukul Textile Market,
Ring Road, Surat.

Copy to:

1. The Commissioner of CGST & CX, Surat, New Central Excise Building Chowk Bazaar, Surat 395 001.
2. The Commissioner of CGST & CX (Appeals) 3rd Floor, Magnus Building, Althan Canal Road, Near Atlanta Shopping Center, Althan, Surat-395007.
3. The Deputy / Assistant Commissioner, Division-I/II CGST & CX Surat, New Central Excise Building Chowk Bazaar, Surat 395 001.
4. Sr. P.S. to AS (RA), Mumbai
- ~~5. Guard file~~
6. Spare Copy.