

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, Cuffe Parade,
Mumbai- 400 005

F. No. 195/1451/12-RA/5484

Date of Issue:- 27/11/19

ORDER NO. 151/2019-CX(WZ)/ASRA/MUMBAI DATED 15.11.2019 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.

Sl. No.	Revision Application No.	Applicant	Respondent
1	195/1451/12-RA	M/s Silver Touch, Surat	Commissioner, CGST & CEX, Raigad.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. US/521/RGD/2012 dated 28.08.2012 passed by the Commissioner of Customs (Appeals-III), Mumbai.

ORDER

This Revision application is filed by M/s Silver Touch, Surat (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. US/521/RGD/2012 dated 28.08.2012 passed by the Commissioner of Central Excise (Appeals-III), Mumbai.

2. The Brief facts of the case are that the applicants have filed 18 rebate claims collectively for Rs. 6,44,848/- (Rupees Six Lakh Forty Four Thousand Eight Hundred Forty Eight Only). The impugned rebate claims were rejected by the rebate sanctioning authority on the following grounds :

2.1 The exported goods were fully exempt under Notification No. 30/2004-CE and in view of sub-section (1) of Section 5A of the Act the appellant could not have paid duty and did not have option to pay duty.

2.2 The goods were cleared without self sealing and self certification before the clearance of export.

2.3 The CSH and description of exported goods in central excise invoice and shipping bills do not tally.

2.4 The container numbers in respect of three rebate claims mentioned in shipping bills do not ~~match~~ with that shown in bill of lading.

2.5 In respect of six claims, the container number has not been shown in bill of lading.

2.6 In respect of one claim, the name of vessel and the voyage number is different in shipping bills and corresponding bill of lading.

2.7 It is observed that some of the rebate claims pertain to the goods processed by the applicant against whom the show cause notice was issued by the department since the appellant had failed to submit documentary evidence to prove the genuineness of the availment of cenvat credit by the processors and subsequent utilisation by them for payment of duty on the above exports.

3. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals-II), Mumbai. The appellate authority upheld Order in Original vide his order in appeal No. US/521/RGD/2012 dated 28.08.2012. The appellate authority has drawn following observations while passing the orders:

3.1 The applicant is availing the cenvat credit under provisions of Cenvat Rules, 2004. Hence they could not have been possibly exempt under Notification No. 30/2004 -CE dated 09.07.2004. Accordingly this ground for rejection of rebate claim cannot be sustained and has to be set aside.

3.2 As regards the non matching of CHS, Container number, signature etc. It was held that these are procedural lapse and rebate cannot be rejected on these grounds when relevant documents prove the export of the goods mentioned in ARE-1.

3.3 The other ground on which the claims were rejected is that the appellant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The applicants are a merchant exporter and the goods had been cleared on payment of duty by debit of cenvat credit. During the material time a number of processors fraudulently availed cenvat credit on the basis of invoices issued by bogus/non-existent grey manufacturers including one of the processor M/s Shri Shantinath Silk industries. The processor may also be party in the said fraudulent availment of cenvat credit. The bonafide nature of transaction between the merchant-exporter is imperative for admissibility of the rebate claim filed by the merchant manufacturer and the appellant had not submitted any documentary evidence in this regard

4. Aggrieved by the US/521/RGD/2012 dated 28.08.2012, the applicant filed a revision application under Section 35EE of the Central Excise Act, 1944 on the only ground as mentioned below :

4.1 The applicant had purchased the goods from M/s Shantinath Silk Industries and other processors as well. The Department's contention is that Shri Shantinath Silk Industries (one of the processors) are availing credit on invoices issued by alleged bogus /non-existent grey manufacturers. However, the rebate claim amounting to Rs. 152952/- only pertained to supplies from M/s Shantinath Silk Industries and remaining Rs. 4,91,896/- pertained to other suppliers.

5 A Personal Hearing was held in matter on 23.11.2017, 09.02.2018 and 20.08.2019. Neither the applicant nor the respondent attended any of the personal hearings so granted to them on 19.08.2019. The revision application is taken up for decision on the basis of documents, submissions and evidences available on record.

6. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of the order in appeal, the Government observes that in all eighteen rebate claims filed by the applicant were rejected by the rebate sanctioning authorities on various grounds as discussed above. The said Order in Original was upheld by the Appellate Authority. However, Government observes that the Appellate authority has set aside most of the procedural lapses on which the rebates were rejected by original authority. The Appellate Authority rejected the appeal filed by the applicant mainly on the ground that one of the processor viz. Shri Shantinath Silk Industries, supplying goods to the applicant were availing cenvat credit on invoices issued by alleged bogus / non-existent grey manufacturers.

8. In this regard, Government finds that a show cause notice had been issued to the said processor by Surat-I Commissionerate alleging that during the year 2003, the said processor had availed fraudulent and inadmissible Cenvat Credit on the strength of invoices issued by units which have been

declared fake / fictitious units as per various Alert Circulars issued by the Central Excise authorities of Surat-I Commissionerate. On account of the same, the Appellate Authority has inferred that the appellant may also be a party in the said fraudulent availment of Cenvat Credit and the bonafide nature of transaction between the merchant exporter and supplier manufacturer is imperative for admissibility of the rebate claim filed by the merchant manufacturer and the appellant has not submitted any documentary evidence in this regard.

9. The Government also observes that out of total 18 rebate claims only four rebate claims viz. R.C. No. 33750, 33751, 33236 and 2295 have been rejected by the original authority claiming the said rebate claims to be doubtful on account of alleged fraudulent availment of Cenvat Credit by processor viz. M/s Shantinath Silk Industries on the basis of alert circular and bogus invoices issued by Surat-I Commissionerate. However, there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders in original in this case by the Central Excise Surat-I Commissionerate. The Government further observes from the Order-in-Original dated 28.01.2012 that opportunity was not given to the applicant for substantiation of the genuineness of the said rebate claims. Government, therefore, opines that detail verification by original authority into the allegations of alert Circulars is required to be carried out. Government therefore, is of opinion that the Order in Original No. 1952/11-12 dated 28.01.2012 passed by the Deputy Commissioner (Rebate), Central Excise, Raigad Commissionerate is unjustifiable in the absence of such verification by the Adjudicating Authority. Moreover, Government observes that even if it is assumed, that the processor i.e. M/s Shantinath Silk Industries paid duty on the goods to be exported, from the Cenvat account wherein they have availed inadmissible credit on the basis of bogus invoices issued by grey suppliers, the rebate cannot be denied due to the fact that one to one co-relation between the duty payment and the Cenvat credit availed cannot be established, as the debit

/ payment of duty is made out of total Cenvat credit available in balance and the processor have also availed Cenvat credit on the basis of invoices issued by suppliers other than bogus manufacturers. Government, therefore, holds that the verification on this aspect from the original authority is necessary to establish the genuineness of the Cenvat credit availed & subsequently utilized by the processor for payment of duty towards the above exports.

10. In view of above circumstances, Government sets aside the impugned Order in Appeal and remands the case back to the original authority for adjudication on the basis of observations as stated above. The applicant is also directed to submit all the requisite documents relating for verification. The adjudicating authority will complete the requisite verification expeditiously and pass a speaking order after following the principles of natural justice.

11. Revision application is disposed off in above terms.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To

M/s Silver Touch,
3004, Swadeshi Textile Market,
Ring Road, Surat- 395 002,
Gujrat.

Copy to :

1. The Commissioner of CGST & Central Excise, Belapure Commissionerate, C.G.O. Complex, Sector - 10, C.B.D. Belapur, Navi Mumbai - 400 614.
2. The Commissioner (Appeals-III), CGST & Central Excise, 9th floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400 012.
3. The Assistant Commissioner (Rebate), Raigad, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai - 410208.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.