

REGISTERED
SPEED POST



F.No. 195/1452&1453/12-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.....

21/4/14

ORDER NO. 152-153 /14-Cx DATED 17-4-2014 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 KLA Overseas, Surat

Respondent : Commissioner of Central Excise, Raigad

ORDER

These revision applications are filed by M/s KLA Overseas, 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.195/1453/12-RA	US/501/RGD/12 dt. 22.08.12	1864/11-12/DC/ Rebate/RGD dt. 23.1.12	1297367
2	F.No.195/1452/12-RA	US/502/RGD/12 dt. 22.08.12	1842/11-12/DC/ Rebate/RGD dt. 19.1.12	1577531

2. Brief facts of the cases are as under:

2.1 Brief facts of case in R.A.No.195/1453/12 (OIA No.501 dated 22.8.12).

2.1.1 Deputy Commissioner, Central Excise (Rebate) Raigarh rejecting 11 (eleven) rebate claims totally for Rs.11,30,591/- on the ground that the exported goods 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 and did not have the option to pay the duty and could not have paid duty. The applicants claim to have filed 12 (twelve) rebate claims totally for Rs.12,97,367/-. The adjudicating authority held that one claim for Rs.1,66,776/- [ARE-I No. 153/05-06 dated 02.02.2006] had not been received in the office. He further observed that the rebate claim no.4282 dated 22.05.2007 is time barred; the rebate claim no. 5650 & 5648 dated 12.06.2007 were already decided vide Order No.1842 dated 19.01.2012; the DGCEI has issued a show cause notice to the applicant 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 applicant failed to prove the genuineness of the duty payment and veracity of the input stage credit taken by the processors; 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; the sample test report of the customs &/or in-house sample test report was not furnished; in respect of the three claims, seal No. appearing in the Shipping Bill did not tally with that of the Bill of Lading; in respect of the claim no.25562, the net/gross weight declared in the invoice did not tally with the shipping bill; the procedure laid down under Notification No.19/2004-CE(NT) dated 06.09.2004 was not followed and the deficiency Memo cum Show Cause Notice was not barred by limitation.

2.2 Brief facts of case in R.A.No.195/1452/12 (OIA No.502 dated 22.8.12)

2.2.1 Deputy Commissioner, Central Excise (Rebate) Raigad rejecting 10 (Ten) rebate claims totally for Rs.15,77,531/- and imposing an equal penalty under Section 11 AC of the Central Excise Act, 1944. The applicants claim to have filed 13 (Thirteen) rebate claims totally for Rs.20,09,361/-. The adjudicating authority held that three claims for Rs.4,31,830/- [ARE-1 No.30 dated 15.06.2006, No.41 dated 21.07.2006 and No.89 dated 14.03.2007] had not been received in his office. The adjudicating authority had rejected the claims on the ground that the DGCEI has conclusively proved the dubious role of the applicants merchant exporter 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, Manger and authorised Signatory of M/s Agarwal Textile Mills as well as Director of M/s Swastik Polyprints Ltd. have admitted that only invoices of grey fabrics were received by them without accompaniment of any grey fabrics; the applicant 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.

3. Being aggrieved by the said orders-in-original, the applicant filed appeals before Commissioner (Appeals) who held that processors had claimed cenvat credit and therefore benefit of Notification No.30/04-CE dated 9.7.04 was not available to them as goods were not exempted from duty. However, the appeals were rejected on the ground that applicant merchant exporter was party to fraudulent avilment of cenvat credit on the basis of bogus invoices raised in the name of bogus grey suppliers & 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.195/1453/12 (OIA No.501 dated 22.8.12):

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 22.11.2011, 20.12.2011 & 03.01.2012 for the rebate claims filed from September, 2006 to June, 2007 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 non-existent suppliers and therefore 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 allowing appeal with consequential relief.

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 15.12.2010 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 12 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 allowing appeal with consequential relief.

4.1.4 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.

4.1.5 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.

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) appears to be incorrect in law and without considering the evidences on merits and therefore the said order is required to set aside in the interest of justice.

4.1.7 The applicant submits that both the lower authorities have failed to bring any evidences on record that the supplier of the grey fabrics involved in 12 rebate claims are non-existent when the DGCEI authority had already scanned all documents during the investigation of rebate claims filed by the applicant whereby part of the rebate claims were proposed to reject by issuing show cause notice F.No.INV/DGCEI/BRU/14/2010 dated 15.12.2010 where the grey suppliers were found non-existent. Thus, the order of the lower authorities without bringing on records any corroborative evidences or absolute proof of non-existent of grey suppliers or even putting the name of the grey suppliers in the adjudication order is without application of mind and therefore the said orders are required to set aside allowing the appeal in the interest of justice.

4.1.8 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.

4.1.9 The applicant submits that since the rebate sanctioning authority have not taken any action within fifteen days from the date of lodging claim, the applicant is entitled for interest on completion of the said period while allowing the appeal and the benefit may please be extended in accordance with law.

4.2 Grounds in Revision Application No.195/1452/12 (OIA No.502 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 15.12.2010 and therefore also the entire orders of the lower authorities are not correct in law.

4.2.2 The lower authorities have erred in rejecting rebate claims relying upon the statement of the persons whose cross-examination have not been granted to disprove the allegations and to bring facts on record in the form of oral evidences to corroborate that the grey fabrics were supplied by the respective grey manufacturers etc. and therefore the orders passed by the lower authorities solely relying upon the said statements, is in violation of principles of natural justice.

4.2.3 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.

4.2.4 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 15.12.2010 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 15.12.2010 issued to the applicant for rejection of the rebate claims. The adjudicating authority 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 orders passed by the lower authorities. 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.).

4.3 Applicant further vide letter dated 28.3.14 made following written submissions:

4.3.1 It is respectfully submitted that DGCEI, Vadodara had searched the premises of appellant and withdrawn all the records. After scanning of the records a show cause notice dated 15.12.2010 was issued by DGCEI proposing rejection of rebate claims of Rs.20,09,361/-. The basis for proposing rejection was that 3 grey suppliers namely M/s. Shivam, M/s. Hindustan Garments and M/s. Narayan Silk Mills, all located at Surat were found non-existent and therefore the show cause notice was issued for rejection of rebate claims. Accordingly, the adjudicating authority vide order dated 19.01.2012 rejected the 10 rebate claims of Rs.15,77,531/- and for 3 rebate claims amounting to Rs.4,31,830/- observed that the said 3 rebate claims were not available in the office of Deputy Commissioner, Raigad and therefore the adjudication proceedings was restricted to the rebate claim files available in the office. Against rejection of the rebate claims, appeal was preferred to Commissioner (Appeals) who also rejected the rebate claims. However, he set aside the penalty

imposed. Against the order of the Commissioner (Appeals), Revision Application have been filed before Revision Authority at Delhi which is the subject matter of present proceedings.

4.3.2 It is submitted that after scanning of the rebate claims by DGCEI, the remaining rebate claims amounting to Rs.12,97,367/- were admissible for rebate claims as the grey suppliers were in existent and were not under Alert Circular and therefore the request was made to Deputy Commissioner (Rebate), Central Excise, Raigad for sanction of rebate claims. However, the adjudicating authority vide order dated 23.01.2012 rejected 11 rebate claims amounting to Rs.11,30,591/- under Section 11B of the Act and rebate claims amounting to Rs.1,66,776/- filed under ARE-1 No.153/05-06 dated 02.02.2006 was stated to be not received in the office of Deputy Commissioner (Rebate), Raigad. Against this order, appeal was preferred to Commissioner (Appeals) who vide order No.501 dated 22.08.2012 rejected the appeal. Against this order, revision application have been filed which is the subject matter of present proceedings.

4.3.3 It is submitted that this Hon'ble Court have passed order in the case of Akshita Export vide order No. 1370-1371/13-CX dated 11.11.2013 allowing the revision application and directing the Deputy Commissioner (Rebate), Central Excise, Raigad to decide the matter within thirty days. The proprietor of M/s Akshita Export and M/s KLA Overseas is one and the same and the action of the DGCEI on the issue of rebate claims were carried out against both by way of search to the premises of the exporter present applicant. It was found by the DGCEI Authority that following grey suppliers were found genuine in the case of Akshita Export.

- 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

The applicant submits that in the present case the grey suppliers are Shikha Textiles, Indian Polyfins Pvt. Ltd., Saraswat Trading Investment Co., Rahul Textiles, Saraswat Industries, P.Kumar Fabrics, Bharat Enterprise and Shree Tirupati Synthetics which are covered in the case of Akshita Export.

4.3.4 It is submitted that in show cause notice no. 14 dated 15.12.2010 issued by DGCEI, Vadodara, para 4.1.23 indicates about grey supplier manufacturer Mis. Shree Tirupati Synthetics, Surat and also in para 4.1.24 Saraswat Industries, Udhna, Surat and Mis. Shree Tirupati Synthetics, Surat. All these show that the scanning of grey suppliers was done and only 3 grey suppliers namely Mis. Shivam Textiles, Mis . Hindustan Garments and Mis. Narayan Silk Mills, Surat were found non-existent for which the show cause notice was issued and confirmed. Since, the DGCEI have scanned our rebate claims and proposed rejection only for the amount of Rs.20,09,361/-, there was no cause to reject the balance rebate claims.

4.3.5 It is further submitted that under Right to Information Act, Surat-I Commissionerate had provided information vide letter dated 08.02.2012. They have

supplied the copy of duty payment certificates in respect of ARE-1 No. 10 dated 27.04.2006, 14 dated 09.05.2006, 15 dated 09.05.2006 & 19 dated 15.05.2006. It is also submitted that the Deputy Commissioner, Central Excise, Division-V, Surat-I under RTI reply dated 10.02.2012 have stated that duty payment certificates in respect of export made by KLA Overseas is not traceable in the Range Office. Therefore it is not possible to grant inspection of the file or to provide copies of duty payment certificates in respect of export made by Mis. KLA Overseas. It is submitted that duty payment certificates file have been misplaced in the Government department at Raigad as well as at Surat. Since, the applicant had not taken the option for sealed cover of duty payment certificates to be submitted along with the claims, certificates were required to be sent directly by the Range Superintendent to rebate sanctioning authority at Raigad. Since, at both the places, the duty payment certificate file have been found misplaced from their office, the applicant have become handicap for proving the duty paid nature of the goods as the departmental officers are not co-operating on the issue. In the circumstances, the applicant produces the copy of monthly returns of respective processors showing that the goods under respective invoices have suffered duty and the duty have been paid by the said processors which have been shown in their monthly returns. It is therefore requested to direct the Superintendent having jurisdiction over the processing unit to verify the duty paid nature of the goods from the monthly returns submitted and to send the duty paid nature verification report directly to the rebate sanctioning authority within thirty days and to sanction rebate claims within a further period of thirty days in the interest of justice.

4.3.6 In alternate it is prayed to give direction to rebate sanctioning authority to consider the monthly returns submitted by the applicants after verifying the genuineness of the monthly returns for the respective invoices of the goods exported and duty paid for the said month and based on that rebate claims may please be allowed.

4.3.7 The applicant submits the affidavit of processors M/s. Swastik Polyprints Pvt. Ltd., Sachin, Surat, M/s. Agarwal Textile Mills, Katargam, Surat and M/s. Akshita

Export to the effect that grey fabrics were received by the processors under grey suppliers who were in existent and resultant processed fabrics were cleared under respective invoices and ARE-1s for export on which duty have been suffered for which monthly returns have been filed to the Central Excise authority which have been accepted.

4.3.8 It is also submitted that we have made payment to grey suppliers for the goods purchased and foreign remittance have been received for the 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.

5. Personal hearing scheduled in this case on 3.4.2014 was attended by Shri K.I.Vyas, advocate on behalf of the applicants who reiterated the grounds of revision application and submissions made in their written letter dated 28.3.14.

6. Government has carefully gone through the relevant case records and oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. Government observes that in case of R.A.No.195/1452/12-RA (Order-in-Appeal No.US/502/RGD/12 dated 22.08.12) involving rebate claim of Rs.1577531/- the original authority rejected the rebate claim on grounds amongst other grounds that 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 avilment 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 avilment 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.195/1453/12-RA (order-in-application No.US/501/RGD/12 dated 22.08.12). Deputy Commissioner, Central Excise (Rebate) Raigad rejecting 11 (eleven) rebate claims totally for Rs.11,30,591/- on the ground that the exported goods 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 and did not have the option to pay the duty and could not have paid duty. The applicants claim to have filed 12 (twelve) rebate claims totally for Rs.12,97,367/-. The adjudicating authority held that one claim for Rs.1,66,776/- [ARE-I No. 153/05-06 dated 02.02.2006] had not been received in the office. He further observed that the rebate claim no.4282 dated 22.05.2007 is time barred; the rebate claim no. 5650 & 5648 dated 12.06.2007 were already decided vide Order No.1842 dated 19.01.2012. 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.195/1452/12-RA for decision wherein the rebate claims amounting to Rs.1577531/- 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 cenvat credit on the basis of bogus invoices raised by said bogus firms.

8.1 Government observes that the DGCEI investigated the case and issued show cause notice dated 15.12.10 wherein they categorically stated that the said five suppliers were non-existent; that the processors availed cenvat 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 cenvat credit cannot be treated as payment of duty for granting rebate under Rule 18 of Central Excise Rules 2002. Adjudicating

authority has recorded in his findings that in this case applicant had shown on paper to have procured the grey fabrics from bogus grey suppliers and passed on the fake cenvat credit by endorsing such fake invoices to the processors. As such there is nexus between applicant and manufacturer. 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 avilment 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 applicant 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 Harikrishna 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 closing, 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 availment 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.195/1453/12-RA (order-in-appeal No.US/501/RGD/12 dated 22.08.12) pertaining to rebate claim of Rs.1297367/-.

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); and that one claim No.4282w dated 22.5.07 for Rs.33339/- was submitted after expiry of one year and so it was time barred; that claim in respect of ARE-1 No.153/05-06 dated 2.2.06 for Rs.166776/- was not received in the office, that rebate claim No.5650 & 5648 dated 12.6.07 for Rs.75048/- and Rs.122955/- were already decided vide order-in-original No.1842 dated 19.1.12. 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.4282 dated 22.5.07 in respect of ARE-1 No.19 dated 16.5.06 filed on 22.5.07, after lapse of one year's time limit as stipulated under Section 11B of Central Excise Act was rightly held inadmissible. Similarly the other rebate claim in respect of ARE-1 NO.153 dated 2.2.06 was not received in Central Excise Office and

therefore cannot be considered for sanction.

9.2 On perusal of order-in-appeal No.US/501/RGD/12 dated 22.08.12, 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 dated 15.12.10 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.

9.3 On perusal of above details, Government finds that only five suppliers were found bogus and non-existent. 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. 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 15.12.2010 was issued for rejection of rebate claim wherein the goods were supplied by said five grey fabric suppliers only. Government notes that DGCEI on investigation did not find any irregularity with reference to said 12 rebate claims of Rs.1297367/-. 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 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 12 rebate claims of Rs.1297367/- do not relate to grey fabrics/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 which were 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 as discussed above. 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. The rebate claims Nos.12849, 21059, 21058, 21995, 21996, 21997, 25562, 25563 as mentioned in order-in-original No.1864/11-12 dated 23.1.12 are to be considered for sanction after verifying the duty payment particulars. The rebate claim No.4282 is rightly rejected as time barred. The other two rebate claims No.5648 and 5650 as mentioned in order-in-original No.1864/11-12 dated 23.1.12, may be examined in the light of above observation. If the grey fabrics are supplied in by genuine grey suppliers, these two cases are also be considered for sanction along with other 8 claims stated above.

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 as the same are lost by department. 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 duty payment can be verified from monthly return filed in the range office. Government notes that original authority has not stated that duty payment certificates (DPC) were not submitted by the applicant. The SCN dated

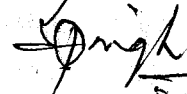
15.12.11 issued for rejection of said claims has also not pointed out anything about non-submission of said DPCs. The adjudicating authority has simply stated that DPC are not available in rebate claim files.

9.5 In this case department has admitted that the duty payment certificate submitted by applicant were missing from their office. In such a situation the claimant cannot be penalized by rejecting the rebate claims for lapses on the part of department. The original authority could have got the verification of duty payment done from jurisdictional Central Excise Range afresh rather than rejecting the claim. Government therefore directs the original authority to consider the said claim as stated in para 9.3 for sanction after getting the duty payment particulars verified by the jurisdictional range superintendent. The range superintendent will be required to submit his report on fresh verification of duty payment particulars from his records within one month of the receipt of communication from the original authority.

10. In view of above discussions, Government finds no infirmity in order-in-appeal No.US/502/RGD/12 dated 22.8.12 and upholds the same. The Revision Application No.195/1452/12-RA is therefore rejected being devoid of merits. Further, Government modifies the Order-in-Appeal No.US/501/RGD/12 dated 22.08.2012 to the above extent discussed in para (9) and allows the Revision Application No.195/1453/12-RA partially. The applicant is directed to submit all the relevant documents relating to payment of duty before original authority within a week's time of this receipt of this order. The original authority will consider the said claims for sanction expeditiously in accordance with law, provided the duty payment on export goods was on verification found in order.

11. So, ordered.

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



(D.P. Singh)

Joint Secretary (Revision Application)



(आणुवत शर्मा/Anshu Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (संयुक्त विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 152-153 /2014-Cx dated 17-4-2014

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)