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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.198/500/11-RA/1057

Date of Issue: 05.02.2018

ORDER NO. 15 /2018-CX (WZ) /ASRA/MUMBAI DATED 31-1-2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

**Applicant** : Commissioner of Central Excise, Customs, & Service Tax, Raigad.

**Respondent**: M/s Vandana Overseas 177/11, GIDC, Pandesara, Surat - 394 221.

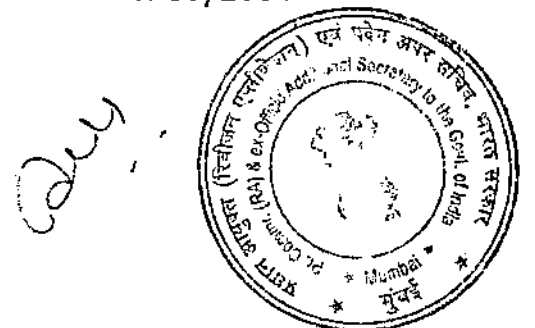
**Subject** : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.YDB/507/RGD /dated 03.05.2011 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.



## ORDER

This revision application is filed by the Commissioner of Central Excise, Customs and Service Tax, Raigad (hereinafter referred to as "the applicant") against the Order-in-Appeal No. YDB/507/RGD/2011 dated 03.05.2011 passed by the Commissioner of Central Excise (Appeals-II), Mumbai .

2. The issue in brief is that the respondent, M/s. Vandana Overseas a merchant exporter situated at 177/11, GIDC, Pandesara, Surat - 394 221 had procured excisable goods from M/s Rachna Art Print Pvt. Ltd. The Respondents exported the goods so procured and filed 14 rebate claims amounting to Rs.12,81,627/-. The Assistant Commissioner, Rebate, Central Excise, Raigad vide Order-in-Original No. 1169/10-11/AC(Rebate) / Raigad dtd.21.10.2010 rejected the 14 rebate claims amounting to Rs.12,81,627/- on the ground that the exported goods were exempt under Notification No. 30/2004-CE dated 09.07.2004. The manufacturer M/s Rachna Art Print Pvt. Ltd. had availed Cenvat credit and had cleared the goods on payment of duty under Notification no. 29/2004-CE dated 09.07.2004. Subsequently a Show cause notice (SCN) bearing no. V (Ch 54)3-Addl/Dem/AD/2008-09 dated 20.10.2008 for Rs.33,90,576/-was issued to M/s Rachna Art Prints Pvt. Ltd. for wrong availment of Cenvat credit on invoices issued fake/bogus invoices of non-existent grey manufacturer. A demand of Rs.27,57,221/- was confirmed and M/s Rachna Art Print Pvt. Ltd. paid the said amount of Rs.27,57,221/- vide various TR 6 Challans on various dates, towards such wrong availment of Cenvat Credit. The adjudicating authority held that when the manufacturer had wrongly taken the credit and later paid back the same, the manufacturer cannot be said to have taken the Cenvat Credit and accordingly manufacturer was governed by Notification No. 30/2004-CE



dated 09.07.2004 and the amount paid by the manufacturer cannot be termed as duty of excise. Accordingly adjudicating authority rejected all 14 rebate claims of Rs.12,81,627/-.

3. Being aggrieved by the impugned Order-in-Original the respondents filed appeal against the said order dated 21.10.2010 before Commissioner (Appeals-II), Mumbai. The Commissioner (A) observed that the only short question involved in the appeal was whether the duty on exported goods was paid correctly as per Notification No. 29/2004-CE dated 09.07.2004 or the same was wrongly paid in view of Notification No. 30/2004-CE dated 29.07.2004. Under Notification No. 29/2004-CE dated 09.07.2004 the goods were chargeable to concessional rate of duty, if Cenvat credit had been availed on the inputs used in their manufacture.

4. The goods had been cleared for export on payment of duty under claim of rebate in the months of November 2004, December 2004, January 2005 and February 2005. The manufacturer had taken Cenvat credit on the inputs used in the manufacture of finished fabrics. Therefore, the duty was correctly paid as per Notification No.29/2004-CE dated 09.07.2004. Commissioner (Appeals) further held that the department's case is that the manufacturer M/s. Rachna Art Prints wrongly taken Cenvat credit. The recovery of wrongly taken credit is governed by Rule 14 of Cenvat Credit Rules, 2004. In the instant case the Cenvat Credit had been, taken, and utilized during the period November, 2004 to February, 2005. After the export rebate claim was filed during the period January 2005 to February 2006.

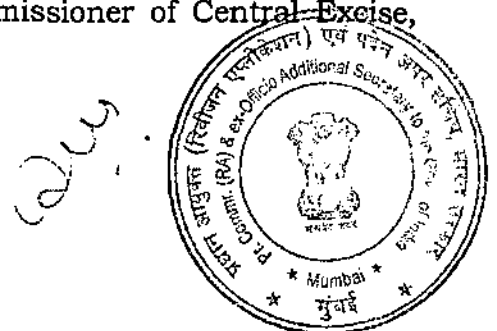
5. The Show Cause Notice was issued to the manufacturer for recovery of the Cenvat Credit on 21.10.2008 i.e. after nearly four years. The admissibility of the rebate claims had to be decided, when they were filed for the period 2005-2006. The rebate claims could not be rejected on the basis of a development that took place at the manufacturer's end after nearly four



years. Further recovery of an amount equal to the Cenvat credit availed and utilised does not mean that credit was not taken at all. It is only when the credit taken is reversed before utilization it may be treated as amounting to not taking credit. Once it is utilized, it cannot be possibly reversed. Further the assessment of the goods cleared on payment of duty by the utilization of the wrongly taken credit. In any case that could be done in a separate proceeding only. The law is settled that unless the assessment is challenged in such a case, the rebate cannot be denied when the goods have been exported. Accordingly, Commissioner (Appeals) set aside the Order-in-Original No. 1169/10-11/AC (Rebate)/ Raigad dtd.21.10.2010 and allowed the appeal filed by the respondent.

6. Being aggrieved the Department filed appeal against the impugned Order in Appeal on following grounds :

6.1 The Original adjudicating authority vide Order-in-Original No. 1169/10-11/AC (Rebate)/ Raigad dtd.21.10.2010 in para 4 has held that in the case of 14 rebate claims verification of duty payment was done with the jurisdictional Range Superintendent of Central Excise who vide letter F.No. R-I/DPC/Rachna/2007-08/232 dated 03.12.09 informed that Show cause notice (SCN) bearing no.V(Ch 54)3-Addl/Dem/ AD/2008-09 dated 20.10.2008 for Rs.33,90,576/-was issued to the manufacturer for wrong availment of Cenvat credit on invoices issued by fake/bogus invoices of non-existent grey manufacturer. The Additional Commissioner of Central Excise, Surat-I vide Order in Original No 45/Adj/ADC-PSK/DEM/2009-10 dated 31.07.2009 confirmed the above mentioned SCN dated 20.10.2008 on the ground indicated therein. It is indicated in the above SCN that M/s Rachna Arts Prints Pvt. Ltd has paid Rs.27,57,221/- vide various TR-6 challans on various dates, towards such wrong availment of Cenvat Credit. The Additional Commissioner of Central Excise,



Surat-I has appropriated the said amount of Rs.27,57,221/-. Therefore, it is evident that no Cenvat Credit on grey fabrics had been taken by the manufacturer as the documents on which credit was availed proved to be fake/bogus/non existent.

6.2 Hon'ble CESTAT in the case of Commissioner of Central Excise, Ghaziabad vs. Ashoka Metal Décor (P) Ltd. reported in 2010 (256) E.L.T.524 (All.) has held that "inadmissible credit if utilized for duty payment, duty to be held as not paid properly and consequences of non payment follow". Similarly in the case of Standard Surfactants Ltd. vs. Commissioner of Central Excise, Kanpur, reported in 1998 (103) 675 (Trib) it has been held that "the appellant have not disputed that the Modvat credit was entered in RG23A Part II without supporting duty paying documents. Further, the credit entry nmade in PLA without depositing the amount in Bank under TR-6 Challan. The appellants company had deposited the amount subsequently and have not disputed their liability for the wrong taking credit in both RG2 3 A and PLA. In view of this penalty is certainly imposable on the appellants' company because of the reason of taking wrong credit the excisable goods have been removed from the factory without payment of duty attracting penal provision of Rule 173 Q".

6.3 From above it is apparent that if it is proved that at a given time if it is found that Cenvat Credit was not admissible for whatever reason, its consequences would be that the payment made for clearances of goods utilizing that credit is considered "clearance without payment of duty". Therefore, it appears that the impugned OIA dated 03.05.2011 is not proper and legal.

7. The respondent filed cross objection to Revision petition on the following grounds:-



7.1 that at the time of payment of duty the duty was proper and correct and the same is upheld by the Hon. Commissioner (Appeals). Further whatever credit was wrongly taken same has been paid by the Manufacturer. The Department if aggrieved by the debit of the Cenvat credit should have taken action against the manufacturer for wrong credit. The Respondents are not responsible for the same and as stated in the Order in Appeal no action has been taken against the assessment by the Department against the manufacturer within the stipulated period. Hence the Rebate claimed by the Merchant Exporter/ Respondents cannot be rejected. That the two Orders of the Hon. CESTAT referred in the Revision application are not applicable in this case as the case of Commissioner of Central Excise, Ghaziabad vs. Ashoka Metal Décor (P) Ltd. reported in 2010 (256) E.L.T.524 (All.) for taking inadmissible credit taken by the manufacturer action needs to be taken against the manufacturer and not against the Merchant Exporter. The manufacturer has already paid the duty and merchant exporter reimbursed the same to the manufacturers. Further manufacturer paid all the wrong cenvat credit availed. Therefore, the rejection of Rebate claim is not only the double recovery once from the manufacturer and again from the Exporter/Respondent but also beyond the period of limitation. The other case referred in the Revision Application of Standard Surfactants Ltd. vs Commissioner of central Excise, Kanpur reported in 1998 (103) E.L.T.675 (Trib) also not applicable to this case because this is regarding penalty and the issue in this case and the Respondent's case are different as the issue in the impugned Revision Application is of sanction of Rebate claim and not of penalty.



The Respondents further submit in this case as under:-

- (i) All these Rebate claims are filed in January, and February, 2005 and no letter or any objection inspite of repeated request for sanction of rebate claim till the issue of impugned show cause notice dated 02.02.2010 has been issued to the Respondents. The SCN is the first correspondence Respondents received against these 14 claims i.e. after 5 years. This itself shows the negligence.
- (ii) The OIO and SCN itself shows that the processor/manufacturer M/s. Rachna Arts Prints Pvt. Ltd. who is the processor in this case and from whom they have purchased the fabrics has paid the amount of irregular Cenvat credit availed after issue of Show cause notice bearing No.V(CH-54)3-Addl/Dem/Ad/ 2008-09 dated 20.10.08 for Rs.33,90,576/-. Manufacturer has paid an amount of Rs.27,57,221/- vide TR 6 challans and the Additional Commissioner vide OIO No. 45/Adj/ADC-PSK/DEM/2009-10 dated 31.7.2009 confirmed and appropriated the said amount. This shows that duty on the exported goods has been appropriately paid by the manufacturer and the Merchant Exporter i.e. Respondents rebate claims are proper and correct as duty has been paid by the manufacturer. There cannot be two punishments for one offence. Once duty has been recovered from the manufacturer and rejection of the rebate claim on which proper duty has been paid by the manufacturer is nothing but double recovery on the same clearance. It is also the policy of the Government that duty no should be exported along with the goods. Further even if the manufacturer took the wrong credit for which the merchant exporter is not responsible and the Merchant exporter has reimbursed the amount to the manufacturer. The manufacturer is registered with Central



Excise and the manufacturer does anything wrong the jurisdictional officers should take appropriate action to recover the duty from the manufacturer. Proper action as required has been taken against the manufacturer in this case by the Department and the manufacturer has deposited the full amount of wrong credit availed. The Respondents have received the goods under proper Central Excise duty paid invoice from the registered manufacturer and the same is certified by the Jurisdictional Range Supdt. For any fault of manufacturer merchant exporter is not responsible. In this connection Hon. Joint Secretary Government of India has passed number of Orders.

- (iii) In respect of allegation that Notification 30/2004 dated 9.7.2004 exempts all the goods falling under Chapter 54 if no credit is taken on inputs is the misconception. Option was given to the manufacturer either to pay duty after availing Cenvat Credit vide Notification No.29/2004-C.E. dated 9.7.2004 and / or claim full exemption vide Notification No.30/2004-CE dated 9.7.2004 without availing any Cenvat Credit. In this case manufacturer opted for paying duty on the finished goods after availing Cenvat credit. It is the duty of the jurisdictional officers to see that manufacturer should not take the cenvat credit if the final product is exempted and it is not the duty of Maritime Commissioner. In this connection Appellants rely on Boards Circular 510/06 2000-CX dated 3.2.200. This Circular was relied by G.O.I. while rejecting the revision application filed by Commissioner - in Re: Banswara Syntex Ltd. - 2004(170)E.L.T. 124(G.O.I.) and was noted by the Appellate Tribunal while it held that claim for rebate cannot be denied on the ground that rebate is admissible only on duty on FOB value





and not in CIF value as long as same represents the transaction value – Sterlite Industries (I) Ltd. V. Commissioner – 2009 (236) E.L.GT. 143 (Tri.-Chennai). If there is any doubt about the payment of duty etc. is there after sanction of rebate claim it should be referred to the Jurisdictional Officers of the manufacturer.

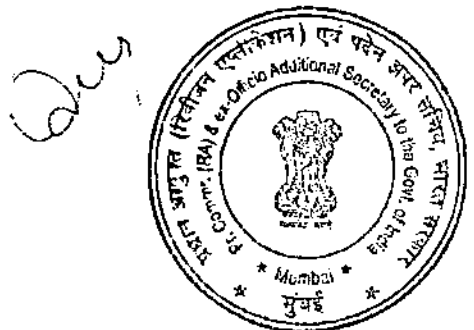
- (iv) The Duty payment has been called from the jurisdictional Range Supdt. of manufacturer by the Deputy Commissioner (Rebate) Raigad. Which is received by him and it is proper and correct. There is no allegation that the duty debited at the time of export is not proper and correct. There is no SCN or Appeal filed against the payment of duty. Once duty paid character of the export goods has been accepted there is no question of non applicability of Section -3. Further physical export of goods has been accepted.
- (v) Respondents state and submit that M/s. Rachna Arts Prints Pvt. Ltd. did not deposit the amount in respect of duty paid on export clearance. In fact there is no allegation against debit of duty on exported goods. The allegation against M/s. Rachna Arts Prints P. Ltd., is against the availment of Cenvat credit. The Respondents are the Merchant exporter who is concerned with the payment of duty on exported goods which is properly paid and the same is accepted by the department.
- (vi) The Respondents state and submit that these are same goods cleared from the manufacturer's premises and it is certified by the Central Excise Officers as well as Customs authorities. The ARE1 No. is shown on the Shipping Bill and the S.B. No. shown on the ARE1. Both these entries are certified by the Customs Authorities. When the physical export is certified, even if there is any clerical mistakes are there this needs to be condoned in



the interest of Export. Hon. Joint Secretary, R.A. G.O.I. has passed many orders in respect of condonation of procedural mistakes if any in the interest of export, Respondents rely on the same. In this connection Respondents rely on CBEC Circular No. 81/81/94 -CX dated 25.11.1994.

(vii) The Respondents state and submit that Section 3 of the Act i.e. duty should be paid by the manufacturer. In this case Respondents are merchant exporters and M/s. Rachna is the Manufacturer. Therefore, any duty is required to be recovered that is required to be recovered from M/s. Rachna / manufacturer. Further M/s. Rachan has paid the full amount of the irregular Cenvat credit availed and there is no allegation against Rancha that the debit of duty against the Respondents cleared for export is not proper and correct. Once the irregular credit taken has been reversed there is no question of denying the rebate. Further in this connection Respondents rely on the following judgements.

- (a) 2005 (186) ELT 100 (Tr.Mumbai) - Prachi Poly Products Ltd. vs. CCE, Raigad - Cenvat/Modvat- Inputs - Applicants taken all reasonable steps to ensure that duty has been paid on inputs received by them and on which they took credit - Credit not deniable - Further, where the supplier defaults any payment of duty outstanding together with interest required to be recovered from him, an action against the consignee to reverse/recover credit availed need not to be resorted to as long as the bonafide nature of transaction is not in dispute - Rules 3,7,12 & 13 of Cenvat Credit Rues, 2001 & 2002.
- (b) 2005 (184) ELT 397(Tr.Delhi) - CCE, Jallandhar vs. Aggarwal Iron Industries- Cenvat/Modvat - Actual duty



paid by manufacturer admissible as credit – Buyer having no responsibility to ensure that correct duty paid by manufacturer of inputs – Credit taken by assessee on duty discharged by manufacturer of inputs, proper and not to be varied when original assessment of inputs remains same – Rule 57A of erstwhile Central Excise Rules,1944 – Rule 3 of Cenvat Credit Rules,2004.

- (c) 2005(191) ELT-899 (Tri. -Del.) – Parasrampuriah Synthetics Ltd. vs. CCE, Jaipur – Cenvat/Modvat – For mistake in payment of duty by supplier, issue to be raised at suppliers end and not at Applicants as they had taken Cenvat credit on the basis of invoice issued by supplier – Cenvat credit taken on basis of specified duty paying document not disallowable – Rules 4 and 9 of Cenvat credit Rules,2004.

- (viii) In connection with availing credit and exemption, Respondents rely on the CBEC Circular No. 795/28/2004-CX., dated 28.7.2004 issued immediately after abolition of Rule 12B. This Circular gives the prose & Cone how the Notification 29/2004-CE dated 9.7.2004 and 30/2004-CE 9.7.2004 are independently can be claimed and simultaneously claimed. Whatever it may if the manufacturer commits any mistake Respondents are not responsible and they should not suffer. Further proper action has been taken against the manufacturer and wrong credit has been got deposited. Therefore the rebate claimed by the Respondents needs to be refunded to them.

Copy of the Circular No. 795/28/2004-CX., dated 28.7.2004 is enclosed herewith and marked as Annexure- 'A'.

- 7.2 it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by



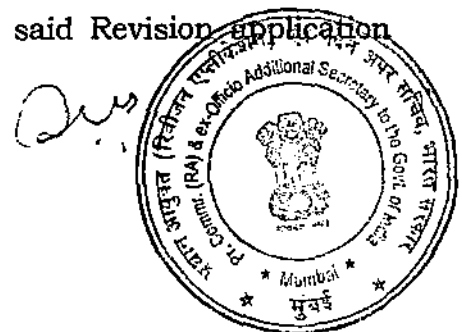
them at various stages of their manufacture in order to make them competitive in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods competitive in the International market, the tax element in the exporter's cost is refunded to him through the system of rebate. This is only a reimbursement and not any kind of incentive. The Respondents have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export.

7.3 the Respondents exported the goods under ARE1 and submitted the Triplicate copy of ARE1s within 24 hours as required to the Jurisdictional Range Supdt. After certification by the Range Supdt. the said Triplicate copy of ARE1 was submitted along with the Rebate claim before Maritime Commissioner. After export submitted rebate claim along with all the required documents. Out of this Shipping Bill, ARE1 in original and Duplicate, Custom Certified Export Invoice and Packing slip on all endorsement by Customs Authorities showing that whatever goods cleared under ARE1 has been duly exported. Along with the Rebate claim the Respondents also submitted the Triplicate copy of ARE1 received from the Range Supdt. in sealed cover and Original copy of the Central Excise Invoice showing therein the Description of goods cleared, quantity cleared, duty payable etc. all these particulars are shown on the ARE1 and description and quantity is also shown on the S.B. and export Invoice. There is no allegation that whatever cleared has not been exported. It is also accepted that the goods cleared under ARE1 has been exported. Duty payment is also certified by the Jurisdictional Range Supdt. The remaining allegation is procedural which needs to be



condoned in the light of the following Orders of GOI, Tribunal and Judgments.

- (a) GOI Order No. 514/2006 dated 30.6.2006 – M/s. Ambica Knitting – Distinction between Mandatory and procedural lapses and procedural lapses required to be condoned. Marked as Annexure – ‘B’.
  - (b) M/s. Banner International Order No. 255/07 dated 27.4.07. Marked as Annexure – ‘C’.
  - (c) M/s. Vipul Dye Chem Ltd. Order No.873/2006 dated 29.9.2006. Marked as Annexure – ‘D’.
  - (d) M/s. Britannia Industries Ltd, Mumbai. Order No. 380-382/07 dated 29.06.2007. Marked as Annexure – ‘E’.
- 7.4 it is the policy of the Government that no duty should be exported along with the goods. Therefore, the Technical lapse if any on their part may please be condoned and OIO may be set aside.
- 7.5 Rule 18 of Central excise Rules, 2002 read with Notification No. 19/2004 CE (NT) dated 06.09.2004 allows rebate of duty on excisable Goods exported through a merchant exporter. Since there is no denying the fact that proper duty was paid on the finished products were duly exported, the Respondents cannot be penalised for merely for non-compliance of procedures. Respondents rely on the following judgments:
- a) Krishna Filaments Ltd 2001 (131) ELT 726 (GOI). - Marked as Annexure –‘F’.
  - b) CBEC Circular No. 510/06/2000-CX., dated 3-2-2000 - Marked as Annexure – ‘G’.
- 7.6 the Stay Application filed by the Department is not proper as the Order in appeal passed by the Hon. Commissioner (Appeals) is proper and correct and needs to be upheld. In view of the same the stay application is not proper and needs to be set aside abinitio in limine.
- 7.7 that, in the above genuine circumstance and bonafide facts, it may kindly be appreciated that, the said Revision application



filed by the Department before the Hon. Joint Secretary to the Government of India, Revision Authority is, improper, in correct, against the law, and thus is required to be set aside in limine.

8. A Personal hearing in the matter was fixed on 27.12.2017. No one was present from the applicant's side (Revenue). Shri R.V.Shetty Advocate duly authorized by the respondent appeared for the personal hearing and reiterated the submissions made in cross objection in the instant RA. He relied on the case law 2013 (297) ELT 312 (Commr)(A). In view of the same he pleaded that RA filed by the Revenue be dismissed and OIA be upheld.

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

10. Government observes that the adjudicating authority rejected the rebate claims filed by the respondent on the ground that the exported goods were exempt under Notification No. 30/2004-CE dated 09.07.2004. The manufacturer M/s Rachna Art Print Pvt. Ltd. had availed Cenvat credit and had cleared the goods on payment of duty under Notification no. 29/2004-CE dated 09.07.2004. Meanwhile a show cause notice issued to M/s Rachna Art Prints Pvt. Ltd. for wrong availment of Cenvat credit on invoices issued fake/bogus invoices of non-existent grey manufacturer was confirmed M/s Rachna Art Print Pvt. Ltd. paid the amount of Rs.27,57,221/- vide various TR 6 Challans on various dates, towards such wrong availment of Cenvat Credit. In view of this adjudicating authority held that when the manufacturer had wrongly taken the credit and later paid back the same, the manufacturer cannot be said to have taken the Cenvat Credit and accordingly manufacturer was governed by Notification No. 30/2004-CE dated 09.07.2004 and the amount paid by the manufacturer cannot be termed as duty of excise and as such rejected all 14 rebate claims of Rs.12,81,627/-.

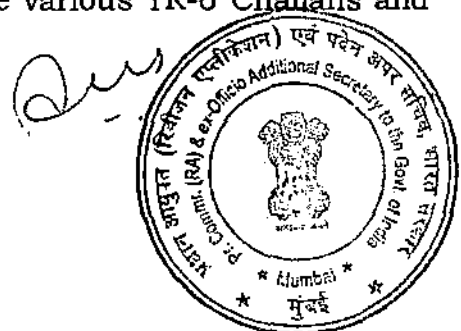


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11. On the other hand Commissioner (Appeals) observed that the goods had been cleared for export on payment of duty under claim of rebate in the months of November 2004, December 2004, January 2005 and February 2005. The manufacturer had taken Cenvat credit on the inputs used in the manufacture of finished fabrics and therefore, the duty was correctly paid as per Notification No. 29/2004-CE dated 09.07.2004. Commissioner (Appeals) further held that the department's case is that the manufacturer M/s. Rachna Art Prints wrongly taken Cenvat credit. In the instant case the Cenvat Credit had been, taken, and utilized during the period November, 2004 to February, 2005. After the export rebate claim was filed during the period January 2005 to February 2006. The Show Cause Notice was issued to the manufacturer for recovery of the Cenvat Credit on 21.10.2008 i.e. after nearly four years.

12. Commissioner (Appeals) also observed that further recovery of an amount equal to the Cenvat credit availed and utilised did not mean that credit was not taken at all and it is only when the credit taken is reversed before utilization it may be treated as amounting to not taking credit. Once it is utilized, it cannot be possibly reversed. Further the assessment of the goods cleared on payment of duty by the utilization of the wrongly taken credit could be done in a separate proceeding only and the law is settled that unless the assessment is challenged in such a case, the rebate cannot be denied when the goods have been exported. Accordingly, Commissioner (Appeals) allowed the appeal filed by the respondent.

13. The applicant have pleaded that Additional Commissioner of Central Excise, Surat-I vide OIO No.45/Adj/ADC-PSK/DEM/2009-10 dated 31.07.2009 confirmed the demand of Rs 27,57,221/- against M/s Rachna Art Prints Pvt. Ltd. for wrong availment of Cenvat Credit on invoices issued by fake/bogus/non-existent grey fabric manufacturer and M/s Rachna Art Prints Pvt. Ltd. has paid the said amount vide various TR-6 Challans and



therefore, it is evident that no Cenvat Credit on grey fabrics had been taken by the manufacturer as the documents on which credit was availed proved to be fake/bogus/non-existent. The applicant further stated that if it is proved that at a given time if it is found that Cenvat credit was not admissible for whatever reason, its consequences would be that the payment made for clearances of goods utilizing that credit is considered "clearance without payment of duty". Therefore, when the goods cleared for export have been found to be non duty paid, rebate cannot be sanctioned against those clearances.

14. The respondent have pleaded that the manufacturer viz. M/s Rachna Art Prints Pvt. Ltd. has paid an amount of Rs.27,57,221/- and the Additional Commissioner vide Order in Original dated 31.07.2009 confirmed and appropriated the said amount shows that duty on the exported goods has been appropriately paid by the manufacturer and the merchant exporter i.e the respondent, the rebate claims are proper and correct. In this regard, it is observed that during investigation by department the suppliers of inputs were found non-existent which resulted in confirmation of demand of Rs.27,57,221/-. It remains a fact that due investigations were done and the proper authorities conclusively proved that supplier of manufacturer M/s Rachna Art Prints Pvt. Ltd., was fictitious. M/s Rachna Art Prints Pvt. Ltd claimed to have purchased the duty paid inputs from entity which was found non-existent. As such it is quite clear that the manufacturer had taken the Cenvat Credit against fraudulent documents which were null and void and payment of duty non-exist .The case laws cited by the respondent are of individual facts are of no help, when till date the involved "fraud" is proved and the manufacturer is party to fraud. Unless and until duty paid character of exported goods is proved the rebate cannot be granted. In this case manufacturer M/s Rachna Art Prints Pvt. Ltd. had procured the grey fabrics from non-existent suppliers and therefore they themselves have in a way played role in committing this fraud. When the purported person, who



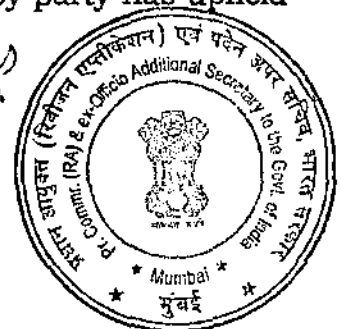


has issued the invoices of grey fabrics is fictitious, whole transaction starting from procurement and ending with exports are vitiated since the manufacturer procuring grey fabrics on fake papers was in knowledge of said fraud.

15. Government notes that issuance of fraudulent bogus invoices in the name of non-existent suppliers of grey fabrics has not contested by the respondent. Further, payment of amount confirmed by Additional Commissioner vide Order in Original dated 31.07.2009 towards wrong availment of Cenvat Credit, by M/s Rachna Art Prints Pvt. Ltd. also indicates that they even after knowing that no such supplier existed, paid duty from such fraudulently availed Cenvat credit. As such the whole transaction becomes bogus which was created on paper for availing rebate claims fraudulently. The duty paid out of such wrongly availed Cenvat credit cannot be treated as payment of duty on export goods as no actual Cenvat credit was available with manufacturer and the credit was taken on duty paid inputs on which appropriate duty of excise had not been paid. As such the rebate claims filed are not admissible under Rule 18 of Central Excise Rule 2002.

16. In the case of Omkar Overseas Ltd. [2003(156) ELT 167(SC)] Hon'ble Supreme Court has held in unambiguous terms that rebate should be denied in cases of fraud. In Sheela Dyeing and Printing Mills (P) Ltd. [2007 (219) ELT 348,(Tri.-Mum)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgement has been upheld by the Hon'ble High Court of Gujarat.

17. In a similar case of M/s. Multiple exports Pvt. Ltd., Government vide GOI order No 668-686/11-Cx dt. 01-06-2011 has upheld the rejection of rebate claim by lower authorities. Division Bench of Hon'ble High Court of Gujrat, vide its order dated 11-10-2012 in SCA No 98/12 with SCA No 101/12 [reported in 2013 (288) E.L.T. 331 (Guj.)], filed by party has upheld



the above, said GOI Revision order dated 01-06-2011. Government also observes that the contention of the respondent that they had exported the goods on payment of duty and therefore, they are entitled to rebate of Excise duty . The same arguments came to be considered by the Division Bench of Hon'ble High Court of Gujarat in Special Civil Application No. 13931/2011 in Diwan Brothers Vs Union of India [2013 (295) E.L.T. 387 (Guj.)] and while not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench has observed as under :

*"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."*

18. In the present case also, the Additional Commissioner of Central Excise, Surat-I vide OIO No.45/Adj/ADC-PSK/DEM/2009-10 dated 31.07.2009 confirmed the demand of Rs 27,57,221/- against the manufacturer M/s Rachna Art Prints Pvt. Ltd in respect to the fake transactions between manufacturer and supplier. The conclusions arrived at by the Additional Commissioner are on the basis of evidence on record and such conclusions are accepted by the manufacturer M/s Rachna Art Print Pvt. Ltd. by paying the said amount of Rs.27,57,221/- vide various TR 6 Challans on various dates, towards such wrong availment of Cenvat Credit.

19. Government also rely on the judgments of Mumbai High Court in case of Commissioner of Central Excise, Mumbai-I Vs M/s Rainbow Silks &Anr reported at 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court,



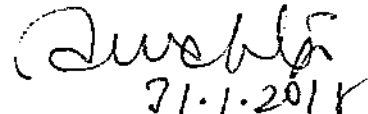
*20/11*

Mumbai, in similar circumstances ie., when a processor is a party to a fraud, wherein cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and utilized for payment of duty on goods exported, it was held that "since there was no accumulation of cenvat credit validly in law, there was no question of duty being paid therefrom" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

20. In view of above discussions and findings, Government holds that the rebate claim is not admissible to the respondent. Accordingly, Government sets aside the impugned order-in-appeal and allows the revision application with consequential relief.

21. The revision application succeeds in terms of above.

22. So ordered.



(ASHOK KUMAR MEHTA)

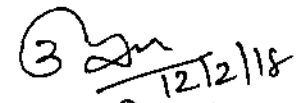
Principal Commissioner & ex-Officio  
Additional Secretary to Government of India.

ORDER No. 15/2018-CX (WZ) /ASRA/Mumbai DATED 31<sup>st</sup> January, 2018

To,

True Copy Attested

The Principal Commissioner of CGST & CX,  
Belapur Commissionerate,  
CGO Complex, Belapur,  
Navi Mumbai, Thane.



एस. आर. हिरुलकर  
S. R. HIRULKAR  
(A C)

Copy to:

1. M/s Vandana Overseas,177/11,GIDC,Pandesara, Surat-394 221
2. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup>Floor,CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

