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F.No. 195/256/11-RA-CX
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.....2/12/11

ORDER NO. 1648 DATED 05.12.2012 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 ORDER-
IN-APPEAL No. M.I/RKS/15/2011 dated 7.1.11 PASSED BY
COMMISSIONER OF CENTRAL EXCISE (APPEALS), Mumbai-I

APPLICANT : M/S SATYA INTERNATIONAL, SURAT

RESPONDENT : COMMISSIONER OF CENTRAL EXCISE, MUMBAI-I

ORDER

This revision application is filed by the applicant M/s Satya International, Surat against the order-in-appeal No.M-I/RKS/15/2011 dated 7.1.11 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to order-in-original No. 201/R/05 dated 7.11.05 passed by Assistant Commissioner Central Excise (Rebate), Mumbai-I Commissionerate.

2. Brief facts of the case are that the applicants have claimed rebate on duty paid exported goods which was sanctioned by the adjudicating authority who observed that the export of goods was not in doubt as was evident from the original and duplicate copies of ARE-1s duly certified by the customs authorities and that the goods were also of 'duty paid character' as the duty paid certificate are received from the Jurisdictional Range Supdt.

3. The Impugned order was reviewed by the Commissioner, Central Excise, Mumbai-I Commissionerate and an appeal was filed before Commissioner (Appeals) on the ground that the claimant's credentials were under clouds in terms of alert circular issued by AC Division, Boisar-II, Thane-II Commissionerate (F.No.VI/PI/Siddhi/BSR-II/05 dated 13.4.05) as they have availed credit on fake and bogus documents, thereby making payment against the fake fabricated credit, which is nothing but non-payment of duty. After due process of law Commissioner (Appeals) has set aside the impugned order and allowed the appeal of department.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Applicants are merchant exporters. The goods cleared under the ARE1 and Central Excise Invoice. The duty payment certificates have been certified by the Range Supdt. After verification of duty payment certificate and the confirmation of physical export the rebate claims filed by the Applicants has sanctioned. There is no

allegation about this and both the duty payment and physical export has been accepted. The allegation against the applicants is that they are under bad list. This is not factually correct. However, these goods are exported from the premises of Processor M/s Prayarag DYG & Ptg. Mills, M/s Prayagraj is not under bad list and the duty payment certificate has been issued by the Jurisdictional Range Supdt of M/s Prayagraj, the Assistant Commissioner (Rebate) sanctioned the impugned rebate claims only after verification of credit availed by M/s Prayagraj is proper and correct. Hence on presumption and assumption facts cannot be overruled. Hence this is a wrong order.

4.2 The Commissioner (Appeals) in the impugned order allowed the appeal of Department only on one ground that the cenvat credit availed by the manufacturer of the goods exported is not admissible in law, as it is availed on the basis of fake bogus documents and hence its utilization for payment of duty on goods for payment of duty on goods exported and subsequently claim of rebate of such duty is not permissible, as it perpetuates the fraud committed by the manufacturer of the goods. Applicants submit that the Assistant Commissioner (Rebate) sanctioned the Applicant's rebate claim after getting the duty payment certificate from the concerned Jurisdictional Range Superintendent and after certifying the physical export. The Commissioner (Appeals) without negating the same only on the presumption and assumption set aside the Order-in-Original. The Commissioner (Appeals) should have verified the findings of the Assistant Commissioner whether it is proper or not.

4.3 The Applicants state and submit that they prepare five copies of ARE1. Out of that Original and duplicate copies of the ARE1 and duplicate copy of the Central Excise Invoice move along with the goods taken by the transporter. The third copy and fourth copy handed over to the Jurisdictional Central Excise Officer for authentication of duty payment certificate, for information of export and returning the triplicate after due authentication in the tamper proof sealed cover to handover to the Maritime Commissioner for claiming rebate. Out of the original and duplicate copy taken by the transporter, these are handed over to the Examiner/Appraiser of Customs along with Shipping Bill, Export Invoice, Packing slip and Bill of lading for certifying

valuation and verification of fabrics along with description. After allowing 'Let Export' these packages are taken to Preventive Officer/Supdt of Customs for allowing physical clearance of export and allow loading on the ship. After allowing the export the Preventive Officer signs on the back of both copies of the ARE1 showing therein – the Ship's name, number of packages, date of sailing, shipping bill no. & date, Mate Receipt No. & date. Then he returns the original copy of the ARE1 to the Exporter and duplicate copy in tamper proof sealed cover to handover to Maritime Commissioner for claiming rebate. The Preventive Officer also signs the shipping bill showing therein the ship's name, date of sailing, mate receipt No. & date and Number of packages. The applicants file all these documents along with the rebate claim application before the Maritime Commissioner for correlation with other documents. If all the documents are tallied then only the rebate is sanctioned and paid to them. When all these particulars are tallied each other and the same confirmed by the adjudicating authority after verifying the records, setting aside the said OIO by the Commissioner (Appeals) without giving any allegation against these documents is nothing but harassment. Further the Commissioner (Appeals) accepted all the documents and duty payment certificate. The rejection is on some other ground which is not connected to this rebate claim.

4.4 The Triplicate copy of the ARE1s are submitted to the Range Supdt. within the stipulated period i.e. 24 hours of export. The Range Supdt. after due verification and after certifying the Triplicate copy, returned the Triplicate copy of ARE1s in tamper proof sealed covers to the applicants. The applicants have filed all these ARE1s along with their rebate claims when they filed with the Assistant Commissioner (Rebate). They have also filed shipping bill, bill of lading, export invoice, mate receipt, original and duplicate copy of ARE1s for compare and sanction of rebate claim. They have also filed the duty payment certificate duly issued by the Range Supdt. in original. The officer signed on the triplicate copy of the ARE1s submitted in sealed cover and duty payment certificates are one and the same. Duty was also got verified from the Jurisdictional Superintendent of Central Excise again by the adjudicating authority. The goods exported has suffered proper duty and also the Jurisdictional officers have

certified the same. The applicants state and submit that they have received the foreign remittances in this case.

Case laws relied upon by the applicant:

- 2005(186) ELT100 (Tr.Mumbai) – Prachi Poly Products Ltd. vs. CCE, Raigad
- 2005(184) ELT397 (Tr.Delhi) – CCE, Jalandhar Vs. Aggarwal Iron Industries
- 2005(191) ELT899 (Tr.Delhi) – Parasrampuriah Synthetics Ltd. vs. CCE, Jaipur
- 2005(192) ELT216 (Tr.Bangalore) – Chandana Plastics Ltd. vs. CCE, Visakhapatnam
- 2005(188) ELT344 (Tr.Mumbai) – Global Suntext – CCE, Surat-I
- GOI order No.7 to 9/2001 dated 19.1.2001
- GOI order 2001 (131) ELT726

5. Personal hearing was scheduled in this case on 12.10.12. Shri R.V.Shetty, Advocate appeared on behalf of the applicant who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records Government observes that the original authority sanctioned the rebate claim filed by the applicant observing that export of goods was not in doubt and the said goods were also of duty paid character as duty payment certificate were received from the Jurisdictional Range Supdt. In departmental appeal, Commissioner (Appeals) set aside the impugned OIO observing that cenvat credit availed by the manufacturer of the goods exported is not admissible in law as it is availed on the basis of fake bogus documents and hence its utilization for payment of duty on goods exported and subsequent claim of rebate of such duty is not permissible, as it perpetuates the fraud committed by the manufacturer of the goods. Now the applicants have filed the revision application on the ground stated at para 4 above.

8. In the instant case the applicants submit that the goods were cleared under the ARE 1 and Central Excise invoice and the duty payment certificate have been verified by the Range Supdt. The Triplicate copy of the ARE1s are submitted to the Range Supdt. within the stipulated period i.e. 24 hours of export. The Range Supdt. certified the triplicate copy of ARE 1s in tamper proof sealed cover to the applicants, which were filed before the Assistant Commissioner (Rebate). The goods exported have suffered proper duty and also the Jurisdictional officers have certified the same. There is no allegation against this and all these documents are proper and correct. They pleaded that the Commissioner (Appeals) should have verified the findings of the Assistant Commissioner whether it was proper or not.

9. Government observes that the background of such litigation was that some frauds were unearthed committed by various textile manufacturers regarding availment of cenvat credit on the basis of invoices issued by fake and fictitious manufacturers/weavers. It was observed during the investigation by department that the suppliers of dyed and or printed fabrics were found non-existent and accordingly vide Alert Circular issued by AC Division-Boisar-II, Thane-II Commissionerate dated 13.4.05 in which it was stated that the rebate claims filed by M/s Satya International i.e. the applicants, who exported the goods should be withheld as their credentials were under cloud as they were dealing in the goods and they were availing credit on fake and bogus documents. The Commissioner (Appeals) has set aside the order-of-original authority on this ground that duty was paid on exported goods from the wrongly taken cenvat credit on the basis of fake/bogus invoices.

10. Government notes that the said alert circular asked the authorities to keep rebate claim of applicant pending as their credentials were under cloud. There is no mention of any concluded investigation in this case or any show cause notice issued to applicant/or manufacturer for recovery of wrongly availed cenvat credit from which duty was paid on exported goods. The finding of Commissioner (Appeals) is not sustainable in the absence of any valid documentary evidence supporting the charge of wrong

availment of cenvat credit on the basis of fake/bogus invoices. It is on record that a large scale fraud of wrong availment of cenvat credit on the basis of fake/bogus invoices committed by textile manufacturers was unearthed in Surat and other places. There was an alert circular mentioning the name of applicant. So the case was required to be decided taking into account the outcome of investigations conducted in the matter. As such in the interest of justice, the case needs to be remanded back for fresh adjudication.

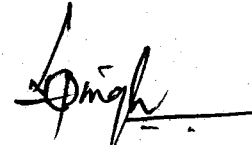
11. Apex Court Judgement in the case of Omkar Overseas Ltd. [2003 (156) ELT 167 (SC)] is relevant to decide the issue at hand. The Hon'ble Court has in unambiguous terms held that rebate should be denied in cases of fraud. In Sheela Dyeing & Printing Mills (P) Ltd. [2007 (219) ELT 348 (Tri)-Mum)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgment has been upheld by the Hon'ble High court of Gujarat. In a recent judgment in the case of Chintan Processors [2008 (232) ELT 663 (Tri. Ahm), the Hon'ble CESTAT while deciding the question of admissibility of Credit on fraudulent invoices has held as follows :

"Once the supplier is proved non existent, it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."

12. In view of above position, Government sets aside the impugned orders and remands the matter back to original authority for denovo adjudication in the light of above observations.

13. The revision application is disposed of in terms of above.

14. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Satya International
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Attended
Y. S. Mishra

श. क. रामेश्वरम् K. RAMESHWARAM
विशेष कार्य अधि./OSD-II (RA)
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

ATTESTED

G.O.I. Order No.

1648

dated 05-12-2012

Copy to:-

1. Commissioner of Central excise, Mumbai-I, 115, New Central Excise Building, K.K.Road, Opposite Churchgate Station, Mumbai-400020.
2. Commissioner (Appeals), Central Excise Mumbai-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400007.
3. The Assistant Commissioner of Central Excise(Rebate), Mumbai-1 Commissionerate Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400007.
4. Shri R.V.Shetty, Advocate, 101, Sterling Court, 'E' - Wing, Opp. Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri (E), Mumbai-400093.
4. Guard File.
5. PS to JS (RA)
6. Spare Copy


(P.K.Rameshwaram)
OSD (Revision Application)