

REGISTERED POST
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/228/14-RA/2648

Date of Issue:

~~03.2021~~
09.04.2021

ORDER NO. 166 /2021-CX (WZ) /ASRA/MUMBAI DATED 31.03.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT, 1944.

Applicants : M/s Satya International,
Plot No. 435, Opp. Pratibha Dyeing,
GIDC, Pandesara,
Surat.

Respondents : Commissioner of CSGT & Central Excise, Mumbai South.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal PD/68/M-I/2014 dated 19.05.2014 passed by the Commissioner of Central Excise (Appeals), Mumbai -I.

ORDER

This revision application has been filed by M/s Satya International, Plot No. 435, Opp. Pratibha Dyeing, GIDC, Pandesara, Surat (hereinafter referred as "the applicant") against Order in Appeal No. PD/68/M-I/2014 dated 19.05.2014 passed by the Commissioner of Central Excise (Appeals), Mumbai - I.

2. Brief facts of the case are that the applicant had filed 10 rebate claims for total amount of Rs. 4,09,695/- (Rupees Four Lakh Nine Thousand Six Hundred Ninety Five Only) in respect of duty paid on the goods manufactured by M/s Prayagraj Dyeing & Printing Mills and exported through Mumbai port. These rebate claims were sanctioned by the Rebate Sanctioning Authority vide Order in Original No. 201/R/05 dated 07.11.2005. The Commissioner of Central Excise, Mumbai-I vide order F. No. V(TR)Rebate/3-539/2005 dated 02.11.2005 directed the Assistant Commissioner (Rebate), Central Excise, Mumbai - I to file appeal against the impugned Order in Original on the ground that the name of the applicant appears in the Alert Circular issued by the Assistant Commissioner, Boisar-II Division, Thane-II Commissionerate and since the credentials of the exporter are under a cloud for the reason that they were dealing in goods and manufacturers had availed credit based on fake and bogus documents, the payment of duty through this fake / bogus documents is nothing but non-payment of duty and ineligible for rebate. In view of the appeal filed by the department, the Show Cause Cum Demand Notice No. V-Adj.(54)CSCN/15-17/2006 dated 03.11.2006 was issued to the applicant for recovery of Rs. 4,09,695/- i.e. erroneously sanctioned rebate along with interest and penalty. The appellate authority vide Order in Appeal No. M-I/RKS/15/2011 dated 07.01.2011 allowed the appeal filed by the department and set aside the Order in Original. Aggrieved by the said Order in Appeal, the applicant filed a Revision Application before Joint Secretary to the Government of India. The Revision Authority vide Order No. 1648 dated 05.12.2012 issued

under F. No. 195/256/11-RA CX set aside the Order in Appeal and remanded the case back to the Original Authority. The Revision Authority observed that in the absence of valid documentary evidence supporting the charge of wrong availment cenvat credit on the basis of bogus documents, the case had to be decided on the basis of the final outcome of the investigation into such wrong availment. The case was again decided by the Deputy Commissioner (Rebate), Central Excise, Mumbai -I and rejected all 10 rebate claims vide Order in Original No. 30/MTC-R/2013-14 dated 28.06.013. The adjudicating authority rejected the impugned rebate claims on the basis of Order of the Commissioner of Central Excise, Surat-I denying the cenvat credit of Rs. 6,96,235/- availed by M/s Prayagraj Dyeing & Printing Mills, who was the manufacture of the goods exported by the applicant, on the grounds that since the cenvat credit which was used to pay the duty which was being claimed as rebate had been denied to the manufacturer, the payment of duty using this credit is irregular, and the transaction is not eligible to rebate. Against the same the applicant filed an appeal before the Commissioner (Appeals-I), Mumbai who vide his Order in Appeal No. PD/6&7/M-I/2014 dated 22.01.2014 rejected the appeal of the applicant. Meanwhile, the adjudicating authority vide Order in Original No. 22/M-I/2013-14 Addl dated 23.12.2013 confirmed the demand of Rs. 4,09,695/- along with interest, being erroneous rebate sanctioned to them by the rebate sanctioning authority.

3. Aggrieved by the Order in Original, the applicant filed an appeal before the Commissioner of Central Excise (Appeals-I), Mumbai - I. The Appellate Authority vide Order in Appeal No. PD/68/M-I/2014 dated 19.04.2014 rejected the appeal filed by the applicant. The Appellate Authority while passing impugned order in appeal observed that :-

3.1 Purportedly suppliers of the fabrics did not discharge the Central Excise Duty on the goods supplied by them including the one to the applicant. The department had prima facie proved that the supplier of the goods, had

committed fraud against the Department and had not paid any duty on the goods sate to have been covered under the invoices issued by them.

3.2 The applicant had also played role in it for which the penalty was imposed on them.

3.3 The Order in Appeal No. PD/6&7/M-1/2014 dated 22.01.2014 is applicable in the present case. Present case is directly related to the same.

3.4 Initially the refund was sanctioned to the applicant vide Order in Original No. 201/R/05 dated 07.11.2005 and Show Cause Notice was issued to the applicant on 03.11.2006 to recover the amount of rebate already sanctioned erroneously. Thus it is within the time limit of one year as per Section 11A of the Central Excise Act, 1944.

4. Being aggrieved by impugned order-in-appeal, the applicants had filed Revision Applications on the following grounds:-

4.1 They have filed appeal against Order No. 30 dated 28.06.2013 which was pending for decision on the subject rebate claims and therefore the action of the appellate authority deciding the demand confirmed by the adjudicating authority vide Order in Original No. 22 dated 23.12.2013 was premature decision as the maid appeal on the issue of rebate is pending and await decision.

4.2 The Appellate Authority had failed to appreciate the facts on record that a show cause notice no. V(Ch.54)15-27/D/JC dated 03.10.2007 was issued to M/s. Prayagraj Dyeing and Printing Mills Pvt. Ltd., Division-III, Surat-I for wrong availment of Cenvat Credit amounting to Rs. 6,96,235/- which was pertaining to the grey fabrics supplied by M/s. R.J. Fashions (full endorsement in favour of M/s. Prayagraj Dyeing and Printing Mills Pvt. Ltd.) and ultimately the Hon'ble High Court of Gujarat allowed the appeal of Prayagraj Dyeing and Printing Mills Pvt. Ltd. as reported in 2013(290) ELT 61 (Guj.). Thus, the finding of the Commissioner (Appeals) in para 6 in relation to said credit of Rs. 6,96,235/- against the appellant is nothing but misunderstanding of facts on

record as the entire case against M/s. Prayagraj was for the grey supplied by M/s. R.J. Fashion only and therefore the finding of the lower authorities to the effect that Prayagraj Dyeing and Printing Mills had taken credit wrongly or on the basis of non-existent firm, is not sustainable in law when the applicant had exported the goods as merchant exporter. In view of this, the very footing and basis of the finding of the rebate sanctioning authority in Order No. 22 dated 23.12.2013 and Order No. 30 dated 28.06.2013 and Order No. 68 dated 19.05.2014 of the Commissioner (Appeals) on the basis of para 6 of his finding was totally based on misleading facts as the said amount of Prayagraj is exclusively pertaining to R.J. Fashion. Except this there is no case against M/s. Prayagraj. In view of this, the said order is required to set aside in the interest of justice.

4.3 The Appellate Authority failed to appreciate that the applicant is a merchant exporter and bought out goods were exported and therefore none of the provisions of credit scheme were applicable to them when the entire payment of the goods was made to the processor including excise duty and therefore the finding of the lower authorities are not correct in law.

4.4 The Appellate Authority failed to appreciate that the action of the revenue for demanding the said Cenvat Credit of Rs. 6,96,235/- availed for the goods supplied by R.J. Fashions was struck down by the High Court holding that the demand was time barred. Thus, the said credit was genuine. In view of this, the order of the Commissioner (Appeals) based on the finding in para 6 that the show cause notice issued to M/s. Prayagraj was confirmed vide Order No. 78 dated 26.02.2008 is wrong.

4.5 The finding of the Ld. Commissioner (Appeals) in para 7. 8 and 9 are based on false finding much particularly wrong availment of credit of Rs. 6,96,235/- by Prayagraj which is in relation to M/s. R.J. Fashions. This fact is clear in the show cause notice F. No. V(Ch.54)15-27/D/JC dated 03.10.2007.

Thus, the finding of Ld. Commissioner (Appeals) is not correct in law.

4.6 The Commissioner (Appeals) failed to appreciate that the show cause notice dated 03.10.2007 issued to M/s. Prayagraj Dyeing and Printing Mills Pvt. Ltd. invoking extended period for the credit of Rs. 6,96,235/- which was supplied by M/s. R.1.Fashions by full endorsement and this credit did not include the finished goods supplied to the present appellant M/s. Satya International but the said credit was in relation to M/s. R.J.Fashions. Thus, the very basis of denying the rebate claims amounting to Rs. 4,09,695/- on the ground of Prayagraj Dyeing and Printing Mills Pvt. Ltd SCN and proceeding thereon is not sustainable in law.

4.7 The finding of the adjudicating authorities and order no. 22 dated 23.12.2013 and 30 dated 28.06.2013 is based on total false finding of facts in para 10 of adjudication order no. 30 dated 28.06.2013, it is stated that - "The claimant M/s. Satya International was a co-noticee. Commissioner. Surat-I adjudicated the case vide F. No. 78/ADJJC-VKS/OA/07-08 dated 26.02.2008." This fact on the face of record is false. A show cause notice vide F. No. V (Ch.S4) 15-27/D,IC dated 03.10.2007 was issued to Prayagraj Dyeing and Printing Mills Pvt. Ltd. and its manager Vikram B. Hada for denying Cenvat Credit of Rs. 6,96,235/- which was adjudicated against them vide adjudication order no. 78 dated 26.02.2008 and the present claimant M/s. Satya International was not a party to the said show cause notice or adjudication proceedings. Thus, the entire proceedings right from the issuance of the show cause notice and rejecting rebate claims till remand proceedings are ab initio void and without authority of law.

4.8 The Appellate Authority failed to appreciate that rebate sanctioning authority had correctly sanctioned the rebate claims on 07.11.2005 after following proper procedure of law and after satisfying the duty paid nature of the goods exported under relevant invoices and ARE-I s

and other documents and therefore the very action of the department of filing appeal and rejecting rebate claims.

5. Government had after due consideration of oral and written submissions of the applicants and after due perusal of the orders passed by the lower authority along with the relevant case records, deliberated upon and allowed appeals by holding that the ratio of GOI order No. 304-307/07 dated 18.5.2007 in the case of M/s Shyam International, Mumbai was applicable to the case as the merchant exporter cannot be denied the rebate claim for the reason that the manufacturer has availed cenvat credit wrongly on the basis of bogus duty paying documents especially when there is no evidence to show any mutuality of interest, financial control, any flow back or fund flow between merchant exporter and manufacturer/supplier of goods.

6. The personal hearing in the matter was held on 16.02.2021. Shri K.I. Vyas, Advocate attended the same on behalf of the applicant. He reiterated the submissions. He further filed fresh submissions stating that they were not co-noticee in the SCN issued to M/s Prayagraj Dyeing & Printing Mills.

7. The following additional grounds were submitted by Shri K.I. Vyas, Advocate additional submissions.

7.1 The findings of the adjudicating authority as well as appellate authority are without verifying the facts of the case. The adjudicating authority in his Order No. 30/MTC-R/2013-14 dated 28.06.2013 in para -10 have given findings that " Fraudulent availment of Cenvat Credit was booked against M/s Prayagraj Dyeing & Printing Mills. The claimant, M/s Satya International was a co-noticee." And based on that the rebate claims were rejected. The said authority failed to verify the real facts from records which is at page 8 of RA application whereby the Show Cause Notice dated 03.10.2007 issued to Prayagraj is annexed and co-noticee is Vikram B. Hada, Manager of the said

Company and the adjudication order dated 26.02.2008, page 14, is also passed against the said person and not the applicant. It is clear that the orders are not in accordance with law. Further, in the case of Prayagraj Dyeing & Printing Mills, the Hon'ble High Court vide order dated 28.09.2012 allowed tax appeal on law and demand is held time barred. Thus, there is no question of denying the credit as the rebate claims.

7.2 When the case against M/s Prayagraj Dyeing & Printing Mills have finally resolved in their favour by High Court then there is no question of denying the credit used by the said company and therefore the export made and payment made of excise duty are rebateable.

8. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal. Since a common issue is involved in both these revision applications, the cases are taken up together for decision by this common order.

9. The Government observes that the impugned rebate claims filed by the applicant were sanctioned by the Rebate Sanctioning Authority vide Order in Original No. 201/R/05 dated 07.11.2005. Further, as per the directions given by the Commissioner of Central Excise, Mumbai- I vide order F. No. V(TR)Rebate/3-539/2005 dated 02.11.2005, the Assistant Commissioner (Rebate), Central Excise, Mumbai – I filed an appeal against the impugned Order in Original. Consequently, the department issued the Show Cause Cum Demand Notice No. V-Adj.(54)CSCN/15-17/2006 dated 03.11.2006 to the applicant for recovery of Rs. 4,09,695/- i.e. erroneously sanctioned rebate along with interest and penalty.

9.1 It is found that the appeal against Order in Original No. 201/R/05 dated 07.11.2005 was allowed by the appellate authority vide Order in Appeal No. M-I/RKS/15/2011 dated 07.01.2011.

9.2 However, the Government notes that while deciding the issue in respect of rejection of the rebate claims, the Revision Authority vide Revision Order No. 1648 dated 05.12.2012 had set aside the Order in Appeal No. M-I/RKS/15/2011 dated 07.01.2011 and remanded the case to the original authority with direction to decide the matter on the basis of the final outcome of the investigation into wrong availment of cenvat credit by manufacturer i.e. M/s Prayagraj Dyeing & Printing Mills.

9.3 As the Government, vide Order No. 1648 dated 05.12.2012 (F. No. 195/256/11-RA CX) had already set aside the Order in Appeal No. M-I/RKS/15/2011 dated 07.01.2011, the demand raised by the department vide SCN dated 03.11.2006 had become infructuous and hence impugned orders confirming demand thereof do not legally sustain.

10. In view of above, Government sets aside Order in appeal No. PD/68/M-I/2014 dated 19.05.2014 passed by the Commissioner of Central Excise (Appeals), Mumbai -I, and allows the Revision Application No. 195/228/2014-RA.

11. The revision application is allowed as above.


31/3/21
(SHRAWAN KUMAR)

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

ORDER No. 66 /2021-CX (WZ) /ASRA/Mumbai DATED 31.03.2021

To,

M/s Satya International,
Plot No. 435, Opp. Pratibha Dyeing,
GIDC, Pandesara,
Surat

Copy to:

1. The Commissioner of Central Goods & Services Tax, Mumbai South Zone, 15th Floor, Air India Building, Nariman Point, Mumbai- 400021.
2. The Commissioner of CGST, Surat Commissionerate, New Central Excise Building, Chowk Bazaar, Surat- 395 001.
3. The Commissioner of Central Goods & Services Tax, (Appeals-I), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012.
4. The Assistant Commissioner, Division -II, Surat Commissionerate, Ground Floor, Central Excise Building, Wing-B, Opp. Gandhi Baug, Chowk Bazar, Surat-395 001.
5. Sr. P.S. to AS (RA), Mumbai.
- ~~6. Guard file.~~
7. Spare Copy.