

REGISTERED SPEED POST



**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

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

F. NO. 198/29/12-RA/1015

Date of Issue: 23/07/2018

ORDER NO. 200/2018-CX(WZ)/ASRA/Mumbai DATED 25.06.2018
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, Thane-I. ←

Respondent : M/s. Sharda Synthetics Pvt.Ltd.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. Th-
I/RKS/58/2011 dated 14.12.2011 passed by the
Commissioner (Appeals) Central Excise), Mumbai-I.



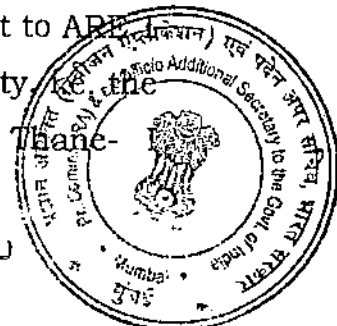
ORDER

This revision application is filed by Commissioner of Central Excise, Thane-I against the Order-in-Appeal Th-I/RKS/58/2011 dated 14.12.2011 passed by the Commissioner (Appeals) Central Excise), Mumbai-I.

2. Brief facts of the case are that the respondent, M/s Sharda Synthetics Pvt. Ltd., the processors of Man Made Fabrics exported the processed goods through their Merchant exporter M/s Klick Impex and M/s. Suncekowa Texport Pvt. Ltd. under the provisions of Rule 18 of the Central Excise Rules, 2002. The respondent, M/s Sharda Synthetics Pvt. Ltd. had exported the goods on payment of duty and therefore, they filed five rebate claims along with requisite documents pertaining to ARE 1 Nos 411/04-05 dated 02.03.2005, 17/05-06 dated 26.04.2005, and 25/05-06 dated 04.05.2006, 36/05-06 dated 18.05.2005, and 38/05-06 dated 18.05.2005, after the said exports were effected. During the course of scrutiny of the said rebate claims and the input invoices, it was noticed that the input invoices pertaining to ARE 1 Nos 17/05-06 dated 26.04.2005, 36/05-06 dated 18.05.2005, 25/05-06 dated 04.05.2006 and 38/05-06 dated 18.05.2006, also included invoices issued by M/s. Panna Synthetics and M/s. Bazari Synthetics. The name of M/s. Panna Synthetics was appearing in the Alert Circular No. 4/2005 dated 13.10.2005. Further, the details contained at Sr. No. 126 in Alert Circular No. 2/2005 dated 07.10.2005 tallied with input invoices issued by M/s. Bazari Synthetics (M/s. Bazari Synthetics is mentioned as M/s. Bagani Synthetics therein), bearing same Central Excise Registration No. and address as that M/s Bazari Synthetics. Both the Alert Circulars cautioned as follows:

"Any Central Excise Invoice bearing the above name, address and registration No. should be treated as bogus and any Cenvat credit availed / rebate claimed by anybody on the strength of such invoices should be treated as improper and remedial action should be taken".

3. The respondent failed to submit the input invoices in respect to ARE No. 411/05-06 dated 02.03.2005. The Rebate sanctioning authority, Deputy Commissioner, Central Excise, Kalyan- III Division, Thane-



Commissionerate vide Order -in- Original No. 76/2007-08 dated 17.12.2007 rejected the 5 rebate claims on the grounds that M/s. Sharda Synthetic Pvt. Ltd. were not eligible for rebate on the basis of the Alert Circulars and for the fact that input invoices in respect of ARE1 No. 411/05-06 dated 02.03.2005 were not submitted by M/s. Sharda Synthetics Pvt. Ltd.

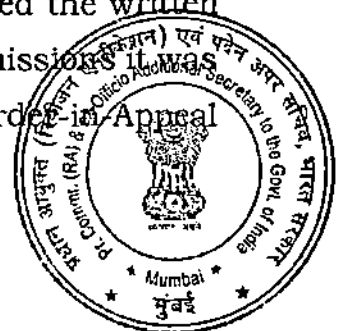
4. Being aggrieved, the respondent filed appeal before Commissioner (Appeals) Central Excise, Mumbai-I. The Commissioner (Appeals), vide O-I-A No. Th-I/RKS/ 58/2011 dated 14.12.2011 (impugned order) set aside the Order -in- Original No. 76/2007-08 dated 17.12.2007 and allowed the appeal filed by the respondent.

5. Being aggrieved by the impugned Order, the applicant Department filed the present Revision Application on the following grounds:

5.1 The Commissioner (Appeals) has erred in interpreting the Alert Circular No. 2/2005 dated 07.10.2005 and No. 4/2005 dated 13.10.2005. The said Alert Circulars cover not only Cenvat Credit but also the rebate claim by anybody on the strength of the input invoices referred therein, which are bogus. In other words there was no moment of inputs against the subject invoices, hence the question of any final goods manufactured out of the said non-existing inputs do not arise. Consequently, the question of export of such final goods is also not possible/established.

5.2 There is no evidence that credit on subject input goods was not taken and utilised or lying credit balance in their account. Therefore the credit was wrongly availed and that the department is correct to ask for its denial.

6. Personal Hearing was held on 17.01.2018. None appeared for the applicant Department. Shri R.M. Vaidya and Shri N.S. Patel, both Advocates appeared for hearing on behalf of the respondent and reiterated the written brief filed on the same day with case laws. In view of the submissions it was pleaded that instant Revision Application be dismissed and Order in Appeal be upheld.



7. In their submissions dated 17.01.2018 filed on the date of hearing, the respondent inter alia averred as under :-

- The grounds of application are imaginary and based on assumption and presumption. Revenue has never adduced any evidence to support their contention and even after 12 years no action was initiated to verify authenticity of alert on which legitimate rebate claim is rejected. Therefore respondent's submissions are that they have not done any wrong against the law and their claim is in order.

- Another ground taken is that the input invoices are bogus and there was no movement of goods on those invoices.

Therefore on no existing goods the question of export of such final goods is also not possible / established.

The Applicant submits that this was not alleged and there was no findings on this ground in O10.

It is contrary to his findings since the goods have been exported which are certified by various authorities and then only the rebate is claimed. Therefore both these grounds do not survive.

- In second ground of application it is alleged that the credit was wrongly availed and that department is correct to ask for its denial.
- It is respectfully submitted that the ground is absurd and baseless because the O10 is was for rejection of Rebate claim whereas ground taken is to deny the CENVAT Credit. Where there was no findings and this ground is also not arising out of O10 hence this ground also will not service.
- In findings of rebate sanctioning authority has harped on alert and bogus invoices and ultimately he concluded that the claim



is not beyond the doubt and he rejected the claim on non existing ground on his own doubts and not on factual position.

- The Commissioner (Appeal) correctly appreciated the facts of case and allowed the appeal which is just legal and proper.

In support of above contention they refer to and rely upon following decisions of Hon'ble supreme Court, High Court and Tribunals.

- 2012(281) ELT 213(Kar.) Commissioner C.EX. Bangalore-I Vs. Bhuwalka Alloys Pvt. Ltd., 2014(304) ELT 108 (Tri-Del.) Shakti Steel Rolling Mills Ws. Commissioner C.EX. Chandigarh.
- 2015(329) ELT 934 (Tri-Del) Chaudhary Steel Traders Ws. Commissioner C.EX. & S.T. Ludhiana.
- 2016(342) ELT 135(Tri-Chan.) Royal Industries Ws. Commissioner COL Chandigarh.
- 2016(343) ELT 690(Tri-Del.) Jyoti Industries Ws. Commissioner C.EX. & S.T. Ludhiana
- Findings of learned Commissioner (Appeals) in para 12 and 13 are quite precise, just and legal. Both the grounds harp upon the illegal charges and allegations. There is no dispute that the fabrics were cleared on payment of duty and rebate was claimed under Rule 18 of the Central Excise Rules, 2002, by following the prescribed procedure. Goods were actually exported. It was not rebate of duty paid on inputs. But it was claim for rebate of duty paid on final processed textile fabrics exported. There is no contrary evidence.
- Though in the proceeding it is only mentioned that the name of the suppliers of grey fabrics are appearing in alert and there is nothing beyond that. There is no supportive evidence adduced.



or whisper as regards Credit availed is wrong as envisaged of CENVAT Credit Rules, 2004.

- Nowhere is it mentioned in Rules that the credit is wrong if names are appearing in Alert. More over the alert was issued on 05.10.2005 whereas inputs were received prior to that, processed and exported on payment of duty much earlier than issue of Alert.
- CENVAT Credit is substantive benefit and it cannot be denied on technical ground as is held in N number of decisions of Hon'ble Supreme Court, High Court and Tribunal. Few are relied upon by the applicant.

Though the grounds taken in R.A. are not arising out of OIA and deserve to be dismissed. We vehemently Contest on the below mention decisions.

They refer to and rely upon case law wherein identical issue was decided by the Commissioner (Appeals) GOI and upheld by the Hon'ble High Court of Gujarat by its order.

2011(270) ELT 321 (Guj) Commissioner C.EX. & Customs Vs. D. P. Singh. wherein Hon'ble High Court observed that:

Exporter had purchased inputs after payment of duty to manufacture and were entitled to claim cenvat credit passed to them by the seller. It could not be said that the exporter had not paid duty Rebate not deniable (Paras 5,6,7,10,11,14.1,14.2)

The above views are affirmed by the Apex Court vide its order reported as 2014(305) ELT 75(SC)

In addition they are submitting three more decisions

1. 2013(292)313 ELT (Tri-Del),
2. Final Order E/A 155 033 dated 03.01.2013



3. Final Order A/91646-91647/2017 dated 07.12.2017

8. 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.

9. On perusal of records, Government observes the respondent, processors of Man Made Fabrics had exported the processed goods through their Merchant Exporter M/s Klick Impex, and M/s. Suncekowa Texport Pvt. Ltd, under the provisions of Rule 18 of the Central Excise Rules, 2002 on payment of duty and therefore, they filed five rebate claims pertaining to ARE 1 Nos 411/04-05 dated 02-03-2005, 17/05-06 dated 26-04-2005, 25/05-06 dated 04-05-2006 , 36/05-06 dated 18-05-2005, and 38/05-06 dated 18-05-2005, after the said exports were effected. During the course of scrutiny of the said rebate claims and the input invoices, it was noticed that the input invoices pertaining to ARE 1 Nos. 17/05- 06 dated 26-04-2005, 36/05-06 dated 18-05-2005, 25/05-06 dated 04-05-2006 and 38/05-06 dated 18-05-2006, also included invoices issued by M/s Panna Synthetics and M/s Bazari Synthetics. The name of M/s Panna Synthetics is appearing in the Alert Circular No. 4/2005 dated 13-10-2005. Also, the name of M/s Bagani Synthetics, bearing same Central Excise Registration No. and address as that of M/s Bazari Synthetics, mentioned on the input invoices submitted by the respondent, is appearing in Alert Circular No. 2/2005 dated 07-10-2005. The respondent failed to submit the input invoices in respect of ARE 1 No. 411/05-06 dated 02-03-2005. The Rebate sanctioning authority i.e. Deputy Commissioner, Central Excise, Kalyan-III Division, Thane-I Commissionerate, vide Order-in- Original dated 17-12-2007, therefore rejected the 5 rebate claims, inter alia, on the grounds that the respondent are not eligible for rebate on the basis of the Alert Circulars and for the fact that input invoices in respect of ARE1 No. 411/05-06 dated 02-03-2005 were not submitted by the respondent.

10. On appeal being filed against this by the respondent, Commissioner (Appeals) while allowing the appeal of the respondent observed as under



"12. In the instant case, I find that the appellants have exported the goods and paid the duty on the said goods at the time of export. This fact is not disputed in the impugned Order and is ably substantiated, as the appellants have produced the copies of relevant ARE-1(s), duly certified by the Customs Authorities regarding shipment of the consignments and; the Central Excise Authorities as to payment of duty on the goods exported. I find that the appellants have filed claims for rebate of the duty paid by them, on the goods manufactured and exported by them and not of to duty paid on the inputs, used in the manufacture of the goods exported 14rthem under the provisions of Rule 18 of the Central Excise Rules, 2002. Therefore, I hold that the Appellants are only required to submit Original copy of the relevant ARE-1 duly endorsed by the Customs authorities, corresponding Invoices issued under Rule 11 of the Central Excise Rules, 2002, self-attested copy of Shipping Bill, disclaimer certificate of the Merchant Exporter and documents evidencing duty: payment in respect of the relevant ARE 1s, alongwith with their rebate claims, as stipulated under Rule 18 of the Central Excise Rules, 2002. I find that the Appellants are not required to file, the input invoices in the instant case Further, I find that the Alert Circulars state that the Central Excise Invoices issued by M/s Panna Synthetics and M/s Bagani Synthetics should be treated as bogus and any Cenvat credit availed claimed by anybody on the strength of such invoices should be treated as improper and remedial action should be taken. The Alert Circulars envisage proper action to recover inadmissible Cenvat credit availed on the basis of bogus invoices issued or by way of rejection of rebate claims pertaining to the duty paid on inputs used the manufacture of goods exported. However, in the instant case I find that the Appellants, have not claimed the rebate, of the duty paid, on inputs used in the manufacture of goods exported, on the strength of invoices issued by M/s Panna Synthetics and M/s Bagani Synthetics. I find that the Appellants have claimed rebate of the duty paid by them at the time of export of manufactured goods, on the basis of certification given by the customs authorities and the Central Excise Authorities as to actual export of duty paid goods. Further, I find that it is not alleged that the Appellants have availed inadmissible Cenvat credit on the basis of bogus invoices issued by M/s Panna. Synthetics and M/ s Bagani Synthetics, in the impugned Order. Even if it is assumed, that the Appellants paid duty on the goods to be exported, from the Cenvat account, wherein they have also availed inadmissible credit on the basis of bogus invoices issued by M/s Panna Synthetics and. M/s Bagani Synthetics, the rebate cannot be denied due to the fact that one to one co-relation between the duty payment and the Cenvat credit availed cannot be established, as the debit / payment of duty is made



out of total Cenvat credit available in balance and the Appellants have also availed Cenvat credit on the basis of invoices issued by suppliers other than M/s Parma Synthetics and M/s Bagani Synthetics.

13. In view of the above discussions, it is abundantly clear that the goods have been exported, the duty has been paid at the time of export, the ARE 1s duly endorsed by Customs authorities are submitted and all other relevant documents as required under Rule 18 of the Central Excise Rules, 2002 are submitted by the Appellants. As the conditions for claim/ sanction of rebate are fulfilled and there being no dispute, I hold that the appellants are eligible for the rebate of duty paid on the goods exported, as claimed by them."

11. Aggrieved by the above Order passed by the Commissioner (Appeals) the applicant department has filed the present Revision Application on the grounds mentioned in para 5 supra.

12. On perusal of records, it is observed that the respondent filed 5 rebate claims of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002. One of the grounds for rejecting the claims was that the input invoices pertaining to ARE 1 Nos. 17/05- 06 dated 26-04-2005, 36/05-06 dated 18-05-2005, 25/05-06 dated 04-05-2006 and 38/05-06 dated 18-05-2006 included invoices issued by M/s Panna Synthetics and M/s Bazari Synthetics whose names appeared in the Alert Circular No. 4/2005 dated 13-10-2005 and No. 2/2005 dated 07-10-2005 and during which both the units had not submitted monthly returns as well, therefore, treating these invoices as improper and doubtful. However, Commissioner (Appeals) in his impugned order observed that the goods have been exported, the duty has been paid at the time of export, ARE-1s duly endorsed by Customs authorities are submitted and all other relevant documents as required under Rule 18 of the Central Excise Rules, 2002 are submitted by the respondents and as the conditions for claim / sanction of rebate are fulfilled and there being no dispute respondent are eligible for the rebate of duty paid on the goods exported, as claimed by them.



13. Government further observes that 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 respondent/Commissioner (Appeals) contended 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.)]. The petitioner of that petition heavily relied upon the decision of Hon'ble High Court of Gujarat in the case of D.P. Singh [2011 (270) E.L.T. 321 (Guj.)]. While not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench of Hon'ble High Court of Gujarat 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 fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."

14. Government also observes that the ground for rejection of 4 Rebate claims by the original authority was on the basis of alert Circular and bogus invoices thereby rendering the said rebate claims doubtful. However, there is



nothing on record to show that there was any further investigation/issuance of show cause notices and Orders in original in this case by the Central Excise Thane-I Commissionerate. As regards rebate claim against ARE 1No. 411/05-06 dated 02.03.2005 the same was rejected for non-submission of input invoices by the respondents. Government further observes from the Order-in- Original dated 17-12-2007 that opportunity was given to the respondent for substantiation of the genuineness of the rebate claims filed against aforementioned ARE-1s however, the respondent neither appeared before adjudicating authority nor did they submit any records /documents proving the genuineness of the Cenvat credit availed & subsequently utilized for payment of duty on the above exports. Government therefore, is of considered opinion that the Order in Original No. 76/2007-08 dated 17.12.2007 passed by the Deputy Commissioner, Central Excise, Kalyan-III Division, Thane- I Commissionerate lacks appreciation of evidence and hence unjustifiable.

15. In view of discussions and findings elaborated above, detail verification by original authority into the allegations of alert Circulars is required to be carried out. Moreover, Government's finds force in Commissioner (Appeals) observation that *"even if it is assumed, that the Appellants paid duty on the goods to be exported, from the Cenvat account, wherein they have also availed inadmissible credit on the basis of bogus invoices issued by M/s Panna Synthetics and M/s Bagani Synthetics, the rebate cannot be denied due to the fact that one to one co-relation between the duty payment and the Cenvat credit availed cannot be established, as the debit / payment of duty is made out of total Cenvat credit available in balance and the Appellants have also availed Cenvat credit on the basis of invoices issued by suppliers other than M/s Parma Synthetics and M/s Bagani Synthetics"*. This verification from the original authority is also necessary, to establish the genuineness of the Cenvat credit availed & subsequently utilized by the respondent for payment of duty towards the above exports.

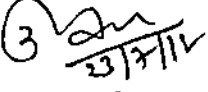


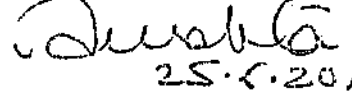
The respondent is also directed to submit relevant records/documents to the original authority in this regard.

16. In view of above circumstances, Government sets aside the impugned Order in Appeal and remands the case back to the original authority for denovo adjudication as stated above. The respondent is also directed to submit all the documents relating to concerned ARE-1s along with original copies of BRCs for verification. The original authority will complete the requisite verification expeditiously and pass a speaking order within six weeks of receipt of said documents from the respondent after following the principles of natural justice.

17. Revision application is disposed off in above terms.

Attested


एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)


25.6.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 200/2018-CX (WZ) /ASRA/Mumbai DATED 25-06-2018.

To,

The Commissioner of GST & CX, Thane Rural Commissionerate,
4th Floor, Utpad Shulk Bhawan, Plot No 24-C: Sector-E,
Bandra Kurla Complex, Bandra (East), Mumbai-400 051.

Copy to:

1. M/s Sharda Synthetics Pvt. Ltd. Plot No. B-1/2, MIDC Phase I, Manpada Road, Dombivali (East), Mumbai-421 201.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner, Division- III, GST & CX, Thane Rural Commissionerate , Vardan Trade Centr, MIDC, Wagle Industrial Estate, Thane.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

