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, Cuffe Parade,
Mumbai- 400 005

F. NO. 195/300/13-RA / 8125 Date of Issue: 25.06.2021

ORDER NO. 208 /2021-CX (WZ) /ASRA/Mumbai DATED 31.5.2021 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 THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act , 1944 against the Order-in-Appeal No. BC/375/RGD(R)/2012-13 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.

Applicant : M/s Batra International, B-5111, 3rd Floor, Raghukul Textile Market, Ring Road, Surat, 395 002.

Respondent : Commissioner of Central Excise, Raigad.

ORDER

This Revision Application has been filed by M/s Batra International, Surat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/375/RGD(R)/2012-13 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant is merchant exporter and has filed nine rebate claims totally amounting to Rs. 14,14,289/- (Rupees Fourteen Lakh Fourteen Thousand Two Hundred Eighty Nine Only) under Rule 18 of Central Excise Rules, 2002 in respect of goods manufactured by different manufacturers / processors.

3. The rebate sanctioning authority vide Order in original No. 2657/11-12/DC(Rebate)/Raigad dated 31.03.2012 rejected the aforesaid 9 (Nine) rebate claims on the following grounds:-

3.1 Processors of fabrics except M/s Aarti Fabrics have not availed the benefit of Notification No. 30/2004-CE dated 09.07.2004, granting full exemption but instead paid duty under Notification No.29/2004-CE dated 09.07.2004 in contravention of provisions of sub-section (1A) of Section 5A of CEA 1944 for the export clearances. Therefore, such payments cannot be considered as duty in terms of Section 3 of CEA 1944 and hence rebate cannot be granted.

3.2 The description & sub-heading of goods mentioned in the invoice did not tally with that in the shipping bill. The applicant did not prove that the goods cleared from the factory are the goods exported. The applicant also did not submit the test report of the samples drawn to confirm the actual description / subheading.

3.3 Mentioning of self sealing and self supervision certificate in the ARE-1s pertaining to 4 rebate claims, is mandatory.

3.4 The Commercial invoices, Packing List, Mate Receipt without self attestation. In respect of ARE-1 No. 13/04-05 dated 04.07.2004 the goods were exported after six months of removal without obtaining permission for extension of the period from the Jurisdictional Comissioner.

3.5 The applicant's name figured in the Alert list as a unit which purchased bogus invoices from bogus grey suppliers. Accordingly duty passed on to the applicant through nonexistent firms right from grey fabrics stage is not admissible as rebate in respect of ARE-1 No. 4/2004-05 dt 21.09.04.

The applicant's name appears as a noticee on whom penalty was imposed for the fraudulent availment of credit by M/s Sidhi Creative, Boisar. Thus the manufacturing units of the applicant fraudulently availed inadmissible credit on strength of bogus invoices issued by bogus non-existent grey suppliers.

3.6 Duty payment certificate which certifies the accumulation of genuine Cenvat credits out of genuine receipts of grey fabrics and the duty payment in respect of export consignments from the said accumulation has not been produced. No documentary evidence produced to show the actual payment of duty at input stage i.e. grey stage. The onus of proving that the credits are genuine and the grey suppliers are genuine lies with the applicant.

3.7 The Bombay high court judgment in the case of M/s Rainbow Silk and others is squarely applicable in the instant case.

4. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III. The Commissioner (Appeals) vide Order in Appeal No. BC/375/RGD(R)/2012-13 dated 31.10.2012 observed as under :-

4.1 The Notification No. 30/2004 dated 09.07.2004 does not grant absolute exemption but is subject to availment of cenvat credit. Hence, rebate cannot be denied on this premise.

4.2 As regards difference in the description and subhead of goods shown in invoices with that in shipping bills, the applicant has not made any submissions. Hon'ble Apex Court in the case or Hari Chand she Gopal 2010 (260)ELT 3 (S C) held at Para 22 that 'The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that eacemption or concession.....

4.3 It is an established principle that the duty paid out of fraudulently availed accumulated credit cannot be termed as duty paid. The facts leading to denial of the rebate claim is that the applicant's name as well as the manufacturer i.e. M/s Pee Tee Silk Mills Pvt Ltd, from whom the applicant purchased finished fabrics, appeared in the Alert Lists issued by Thane-I Commissionerate, Thane-II Commissionerate, Mumbai-1 Commissionerate and Raigad Commissionerate, figure in the list of fraudulent manufacturer and merchant exporter. A case has been booked against these companies for issuing fake / bogus Cenvatable invoices with the sole intention of fraudulent / bogus cenvat credit. Manufacturer has purchased grey fabrics from the non-existing units, etc. The Adjudicating Authority has explained in Para 17 of the Order in Original as to how the supplier of the finished fabrics which were

ultimately shown as exported, have procured from the bogus and fraudulent manufacturers like M/s. Radha Krishna Textile Mills, and M/s. Siddhi Creative, Boisar. It has been revealed during the investigation that M/s.Batra International was actively involved with the entire web starting from purchasing grey fabrics from non-existing units, issuing bogus Cenvatable Invoices and later exporting the goods after paying duty out of such fraudulently accumulated Cravat. Credit. Now, the question arises whether the rebate can be granted when the duty paid itself was from accumulated fraudulent Cenvat credit. Here I observe that when the accumulated credit itself is fake / bogus, no duty can be paid out of such fraudulently accumulated Cenvat credit. Further, the applicant has not submitted bifurcation details of how much quality of fabrics manufactured by M/s. Aarti Fabrics, M/s. Pee Tee Silk Mills Pvt.Ltd., and M/s.R. Square Creations, and later exported, separately.

4.4 Even if the appellants still continues with the contention that they have paid duty and goods have been exported, still the onus of proving that the credits are genuine and the grey suppliers are genuine lies with the applicant which has not been done. Hon'ble Bombay High Court in the case of M/s. Rainbow Silk & Arts, [2011 (274) E.L.T. 510 (Bom.)] held that " *Fraudulent rebate - Exporter claimed rebate of duty paid on goods manufactured by firms who had taken Cenvat credit on the basis of bogus documents* ..... ***Since there was no accumulation of Cenvat Credit validly in law, there was no question of duty being paid therefrom.***

4.5 The Commissioner (Appeals) also relied upon GOI Order[2012(281) E.L.T. 460 (G.O.I.)] in Re: Jwahar International and Tribunal (Ahmedabad)'s Order in the case of Chintan Procecssors Pvt. Ltd.[2008(232) E.L.T. 663 (Tri. Ahmd.)] to hold that no rebate can be granted on thegoods exported, the duty of which itself is from fraudulent account.

4.6 Self sealing and self supervision are mandatory requirements and have to be followed. Over and above, the applicant's name figure in the alert list. The applicant has not contested the Adjudicating Authorities findings of rejecting the rebate claim on the grounds that the goods were exported beyond 6 months of removal. Since the said requirement is mandatory the rejection on this count is proper and justified.

4.7. The applicant was issued a deficiency memo vide letter dated 03.02.2012 and not a show cause notice. Hence, no limitation applies. Accordingly provisions of Section 11A cannot be made applicable in the instant case.

In view of above observations, the Commissioner (Appeals) rejected the appeal filed by the applicant.

5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application mainly on the following grounds that :

5.1 They are a merchant exporter and the issue is covered by the order of Gujarat High Court in the case of Roman Overseas and Prayagraj Dyeing and Printing Mills which are the final orders of the High Court. In view of this, the order of the lower authorities are not sustainable in law and required to set aside allowing appeal with consequential relief.

5.2 The finding of the Commissioner (Appeals) in para 7 of her order on the point of difference of the description and sub-head of the goods shown in invoices with that in shipping bill to the effect that they have not made any submissions, is not correct as they have taken the point well before the adjudicating authority as well as before the Commissioner (Appeals) that it is a technical nature of the lapse and not mandatory requirement. This point have been decided well by Commissioner (Appeals) in the case of Akshita Exports vide Order-in-Appeal No. US/499/RGD/2012 dated 21.08.2012 wherein it is observed that -

> *"The reason for rejection of the claims was difference in the Chapter Heading Number of the Central Excise Tariff declared in the excise invoice of the exported goods and in the corresponding shipping bills. In this respect if is found that the proforma of the Shipping Bills prescribed by the CBEC does not have a column for Central Excise Tariff classification of the exported product. What is required to be mentioned in the Shipping Bills is RITC code number which is not necessarily the same as CET classification. Therefore, there is no requirement of giving CET classification in Shipping Bills. Accordingly, the classification of product in the Excise invoice cannot be held as wrong merely on the basis of RITC code number mentioned on the corresponding Shipping Bills."*

5.3 The Commissioner (Appeals) finding in para 8 to the effect that "It is established principles that the duty paid out of fraudulent availed accumulated credit cannot be termed as duty paid." This view of the Commissioner (Appeals) is absolutely illegal and against the provisions of law. The issue have been finally settled by the High Court of Gujarat in the case of Prayagraj Dyeing and Printing Mills and Roman Overseas wherein the Court have taken the view that the credit can be denied only to the manufacturers and rebate of exporters cannot be denied on the ground that the manufacturer had fraudulently availed accumulated credit for payment of duty as there is no provision in law to reject the rebate claims of the exporter on this ground.

5.4 The finding of the adjudicating authority in para 9 of her order to the effect that — "Even if the appellant still continues with the contention that they have paid duty and goods have been exported, still the onus of proving that the credits are genuine and the grey suppliers are genuine lies with the appellant which have not been done." The Commissioner (Appeals) have relied upon the judgment of Bombay High Court Rainbow Silks and Arts {2011 (274) ELT 510 (Bom.)}. In this connection, it is

submitted that the finding of the Commissioner (Appeals) is not correct as the they are merchant exporter who have purchased ready processed fabrics from the manufacturer and therefore the ratio of the said judgment is not applicable to the facts of the case of the appellant. The Bombay High Court have not given any final verdict on the issue but have remanded the case to the Revision Authority who have taken the view that the above stated point was the contention of the department and not the finding of the High Court. Further, the point of law as regarding taking of credit and issue of notice have been settled by Gujarat High Court in the case of Roman Overseas and Prayagraj Dyeing and Printing Mills which are the final judgments and not remand case which will prevail over the remand case of Bombay High Court in the case of Rainbow Silk. In view of this, the finding of the Commissioner (Appeals) in para 9 is not applicable to the facts of the merchant exporter and therefore rebate claims rejected on the basis of the said findings are not correct and required to be set aside allowing the appeal with consequential relief.

5.5 The findings of the Commissioner (Appeals) in para 10 are not applicable to the facts of the present case as they have not supplied the grey fabrics to the manufacturer but the appellant is the buyer of the processed fabrics which have been exported and therefore the ratio laid down in the case of Jhawar International reported in 2012 (281) ELT 460 (GOI) is not applicable. In view of this, the order of the Commissioner (Appeals) based on the findings made in para 10 is not correct in law and without verifying the facts on record that they are a merchant exporter and have not supplied any grey fabrics to the manufacturer but purchased processed fabrics for which full payment have been made.

5.6 The the judgment of Chintan Processors reported in 2008 (232) ELT 663 which is relied upon by the Commissioner (Appeals) is in relation to the manufacturer processor and merchant manufacturer whereas in the present case the exporter is merchant exporter who have not taken any credit on the basis of any invoices and therefore the ratio laid down in the case of Chintan Processor is not applicable to the present case as the applicant is the merchant exporter.

5.7 The appellant submits that the findings of the Commissioner (Appeals) in para 12 cannot be made applicable to all the rebate claims as it is the finding of in relation to ARE-1 No. 13/04-05 (RC No. 28479 dated 13.12.2005) which cannot affect all the rebate claims of the merchant exporter. Further, the extension of time is condonable. Thus, even the goods have been exported after a period of six months and duty have been suffered by the merchant exporter then the such rebate claims are admissible.

5.8 The finding of Commissioner (Appeals) in para 13 to the effect that they were issued a deficiency memo vide letter dated 03.02.2012 and not a show cause notice. Hence, no limitation applies, is absolutely against the settled provisions of law by the High Court and Supreme Court and therefore the finding of the lower authorities holding that the notice is not barred by limitation is not correct. The notice issued beyond the period of one year is time barred. Hence, the orders passed by the lower

authorities are not sustainable in law and required to set aside allowing the appeal with consequential relief.

5.9 The lower authorities have erred in not appreciating the legal plea properly that the deficiency memo cum show cause notice dated 03.02.2012 was issued to the appellant for the rebate claims filed during July, 2004 to June,2006 and the general law of limitation for issuance of show cause notice is one year when no time limit have been prescribed for issuance of the show cause notice. In this case, the show cause notice have been issued after a period of five years which is not maintainable in law considering the judgment in the case of Ani Elastic Industries reported in 2008 (222)ELT 340 (Guj.). Thus, the finding of the Commissioner (Appeals) that a deficiency memo vide letter dated 03.02.2012 cannot be considered on par with show cause notice is absolutely wrong as the deficiency memo itself state that it is a "Deficiency Memo cum SCN — Call for Personal Hearing" dated 03.02.2012. Thus, the finding of the Commissioner (Appeals) ignoring the specific word show cause notice cannot termed as letter. In view of this, the entire show cause notice is time barred.

5.10 The lower authorities have failed to appreciate the material facts that goods received by the merchant exporter under respective invoices and ARE-1 s are beyond doubt exported and foreign remittance have been received and duty have been paid and therefore there was no cause to deny the legitimate rebate claims.

5.11 The object and intention for granting rebate claims to foreign exchange earners have been established by the Supreme Court in the case of Baby Marine Exports reported in 2007 (211) ELT 12 (S.C.) wherein it is held that —

Interpretation of taxing statutes - Legislative intention -Section 80 HHC of Income Tax Act, 1961 incorporated with the object of granting incentive to foreign exchange earners - Object of the Act must always be kept in view while interpreting the Section - Legislative intent must be the foundation of judicial interpretation. [para 31]

Applying the ratio of the said judgment, the incentive in the form of duty which have been paid on the goods exported is required to be rebated and therefore the orders of the lower authorities rejecting the rebate claims are against the object and intention of the Government which is required to be set aside in the interest of justice.

5.12 The lower authorities have failed to appreciate that the ratio of Shree Shyam International is squarely applicable to the merchant exporter who have purchased the goods from the manufacturer and have exported the same and applying the ratio of the said judgment, the rebate claims were required to be allowed.

5.13 The lower authorities have erred in rejecting the rebate claims on technical deficiency by giving finding that it is mandatory. In this connection, it is submitted that the deficiency memo have been issued in terms Part IV of Chapter 8 of the CBEC's Manual which prescribes that -

"The rebate sanctioning authority should point out deficiency, if any, in the claim within fifteen days of lodging the same and ask the exporter to rectify the same within 15 days. All Queries/deficiencies shall be pointed out once collectively and piecemeal queries should be avoided. The claim of rebate of duty on export of goods should be disposed of within a period of two months."

The above clarification of the CBEC Manual clearly state that the deficiencies are always rectifiable mistake and it cannot be termed as mandatory provisions for granting rebate claims. Thus, the finding of the lower authorities for several deficiencies noticed cannot be termed as mandatory when it is issued in the form of deficiency memo.

5.14 The rebate claims have been filed in July, 2004 to June,2006 whereas the deficiency memo cum show cause notice have been issued on 03.02.2012 which is after a period of five years and not within fifteen days as prescribed in law which is binding to the rebate sanctioning authority in terms of Supreme Court judgment in the case of Paper Products Ltd. reported in 1999 (112) ELT 765 (S.C.). In view of this, the deficiency memo itself is not sustainable in law and it cannot be termed as mandatory after a period of five years of filing of the rebate claims.

6. A Personal hearing held in this Revision Application on 16.02.2021 was attended by Shri K.I. Vyas, Advocates on behalf of the applicant. He reiterated the earlier submission and promised to submit additional written submissions on the matter within a week.

7. Vide additional written submissions dated 18.02.2021, the applicant contended that

- The matter is heard on 16.02.2021. Pursuant to permission granted the they make following specific submissions on merits of the case.
- In para 8 & 9 of Commissioner (Appeals) order, it is stated that the Principal/Supplier/Processor who sold the goods to the merchant exporter have paid duty out of fraudulently availed accumulated credit which cannot be termed as duty paid. In this connection, it is submitted that the allegations made are not proved by any concrete evidence that the manufacturer/ processor had taken credit out of fraudulently availed accumulated credit by cross-verification that the goods purchased by the exporter on which credit was taken by the processor was from non-existent grey suppliers. Even otherwise the merchant exporter is not the buyer of grey fabrics and have outrightly purchased the processed fabrics from R.K.Fabrics, M/s. P.T. Silk Mills Pvt. Ltd. and M/s. R. Square Creations. It is therefore submitted that the ratio of Rainbow Silks judgment is not applicable to the present applicant/appellant. In absence of showing the specific accumulation and co-relation, no presumption can be made in terms of Rainbow Silks. For the purpose of verification of the correct facts, the matter is required to be remanded to the original authority for

appropriate verification in the large interest of justice. Other technical lapses, if any, are condonable for which it is prayed accordingly.

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. Government observes that Commissioner (Appeals) vide impugned Order has upheld rejection of rebate claims on the grounds of (i) difference in the description and subhead of goods shown in invoices with that in shipping Bill; (ii) fraudulently availed accumulated credit cannot be termed as duty paid; (iii) Self Sealing and self supervision are mandatory requirements and have to be followed; and (iv) the goods not exported within 6 months of removal as required vide condition 2(b) of the Notification No. 19/2004-CE, NT dated 06.09.2004.

10. As regards mismatch in description an subheading of the goods, Government observes that while deciding a similar issue GOI In Re : Cotfab Exports - 2006 (205) E.L.T. 1027 (GOI) treated the goods to have been exported, despite mismatch in the description of goods as given in ARE-I/Invoice and Shipping Bill relying on the certification by Customs Officer in Part-B of ARE-I that consignment (mentioned in ARE-I) was shipped under their supervision under Shipping Bill No.....(Shipping Bill No. was mentioned in ARE-I by Customs). Government therefore, observes that . in such cases if 'Net weight, Billing Value, Shipping Bill No., Bill of Laing No., Vessel, Voyage No. and Invoice No. remained consistent across records and in addition Inspector of Customs, at the time of clearance of goods at port, in ARE-1 Part B had clarified the proof of exports, verifying the various documents like commercial invoice, ARE-1 declaration, shipping bill" the said lapse is condonable. Hence rejection of rebate on this ground which is upheld by the Commissioner (Appeals) in the impugned Order is set aside, and rebate will be admissible to the applicant subject to verification as discussed above.

11. As regards procedure of Self Sealing and self supervision laid down in para 3(a) (xi) of Notification No.19/2014 CE dated 06.09.2004 Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure, has been prescribed to identify and correlate export goods at the place of dispatch. Government notes that in the instant case the impugned goods were cleared from the factory without sealing either by Central Excise officers or without bearing

certification about the goods cleared from the factory under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed. Government however observes that failure to comply with provision of self-sealing and self-certification as laid down in para 3(a)(xi) of the Notification No.19/2004-CE (NT) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient corroborative evidence available to correlate exported goods with goods cleared under Excise documents. GOI vide Order No.1231/2010-CX dated 21.07.2010 in RE: Mahajan Silk Mills also observed as under:-

> *9. "Government further observes that the appellant has not given self certification on ARE-1. This can only be a procedural lapse especially in those cases where there is sufficient proof of export of the duty paid goods by way of proper endorsement of Central Excise and Customs Officers on the relevant documents and amount has also been realized vide BRC submitted by the applicant to the rebate sanctioning authority".*

Moreover, there are many cases where Government of India has conclusively held that the failure to comply with requirement of examination by jurisdictional Central Excise Officer, even in cases in terms of Board Circular No.294/10/97-Cx dated 30.01.1997, may be condoned if the exported goods could be co-related with the goods cleared from the factory of manufacture or warehouse and sufficient corroborative evidence found to correlate exported goods with goods cleared under Excise documents. Government places its reliance on para 11 of GOI Order Nos. 341-343/2014-CX dated 17.10.2014 (reported in 2015 (321) E.L.T. 160(G.O.I) In RE: Neptunus Power Plant Services Pvt. Ltd. In view of the above, Government holds that if the corelatibility of the goods cleared under the impugned ARE-1s and those exported is established rejection of rebate claims on these grounds is incorrect. Hence rejection of rebate on this ground which is upheld by the Commissioner (Appeals) in the impugned Order is set aside, and rebate will be admissible to the applicant subject to verification as discussed above.

12. Government notes that in some cases the adjudicating authority rejected the Rebate Claims filed by the applicant on the grounds that the impugned goods were exported after 6 months of their clearance from the factory in violation of condition 2 (b) of Notification No. 19/2004-CE(NT) dated 06.09.2004 and hence inadmissible, Government observes that as per the condition 2(b) of notification 19/2004 CE (N.T.)

dated 6.9.2004 issued under rule 18 of Central Excise Rules, 2002, "the excisable goods shall be exported within six months from the factory of manufacturer or warehouse or within such extended period as the Commissioner of Central Excise may in any particular case allows,". In the present case Government observes that the applicant did not follow the proper procedure under notification 19/2004 CE (N.T.) dated 06.09.2004. Applicant has not obtained extension of validity of ARE-1. Further, aforesaid mentioned issue stands decided in the vide GOI Order No. 40/2012-CX dated 16.01.2012 in Re: Cipla Ltd.. After discussing the issue at length, the Government at para 9 of its order observed as under: -

> *9. Government notes that as per provision of Condition2(b) of notification No. 19/04-CE (NT) dated 06.09.04, the excisable goods shall be exported within 6 months from the date on which they were cleared for export from the factory of manufacturer or within extended period as allowed by commissioner of Central Excise. In this case, undisputedly, goods were exported after lapse of aforesaid period of 6 months and applicant has not been granted any extension beyond 6 months by Commissioner of Central Excise. This is a mandatory condition to be complied with. Since the mandatory condition is not satisfied the rebate claim on goods exported after 6 months of their clearance from factory is not admissible under Rule 18 read with Notification 19/04 CE (NT) dated 06.09.2004.*

In view of the foregoing, Government holds that the applicant is not entitled to rebate of duty paid on goods exported after six months of clearance from factory and the impugned Order in Appeal is upheld to this extent.

13. Government further observes that the rebate claims were rejected mainly as the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors and the rebate sanctioning authority was apparently not satisfied about the bona fide / duty-paid character of the exported goods. Commissioner (Appeals) in the impugned Order has observed that *"the facts leading to denial of the rebate claim is that the applicant's name as well as the manufacturer i.e. M/s Pee Tee Silk Mills Pvt Ltd, from whom the applicant purchased finished fabrics, appeared in the Alert Lists issued by Thane-I Commissionerate, Thane-II Commissionerate, Mumbai-1 Commissionerate and Raigad Commissionerate, figure in the list of fraudulent manufacturer and merchant exporter. A case has been booked against these companies for issuing fake / bogus Cenvatable invoices with the sole intention of fraudulent /*

bogus cenvat credit. Manufacturer has purchased grey fabrics from the non-existing units, etc. The Adjudicating Authority has explained in Para 17 of the Order in Original as to how the supplier of the finished fabrics which were ultimately shown as exported, have procured from the bogus and fraudulent manufacturers like M/s. Radha Krishna Textile Mills, and M/s. Siddhi Creative, Boisar. It has been revealed during the investigation that M/s.Batra International was actively involved with the entire web starting from purchasing grey fabrics from non-existing units, issuing bogus Cenvatable Invoices and later exporting the goods after paying duty out of such fraudulently accumulated Cravat.

14. Government observes that both the lower authorities have held the applicant culpable of having directly facilitated in purchasing grey fabrics from the non –existing units, issuing bogus cenvatable invoices based on the investigations conducted by the Thane-II Commissionerate in case of M/s Siddhi Creative Boisar wherein the applicant was one of the co- noticees. Government observes that in the instant case there is nothing on record to show that there was any further investigation / issuance of show cause notices, confirmation of demand of irregular Cenvat Credit etc. by the concerned Commissionerates against the applicant or its manufacturer/suppliers namely, M/s Aarti Fabrics, M/s Pee Tee Silk Mills Pvt. Ltd and M/s R. Square creations whose names appeared in the Alert lists issued by them. This verification from the original authority was also necessary, to establish whether the Cenvat credit availed & subsequently utilized by these processor/manufacturer for payment of duty towards the above exports was genuine or otherwise. Government therefore, is of considered opinion that the Order-in-original passed by the adjudicating authority in this case lacks appreciation of evidence and hence is not legal and proper. Order in Appeal has also not adduced any evidence for upholding the Order in Original rejecting the rebate claims in respect of the aforementioned manufacturers / suppliers of the applicant and there are no findings that the transactions between the applicant and their grey suppliers were bogus. Hence denial of rebate based on presumptions and assumptions is not legally sustainable. Hence rejection of rebate on this ground which is upheld by the Commissioner (Appeals) in the impugned Order is set aside, and rebate will be admissible to the applicant subject to verification as discussed above.

15. In view of the foregoing discussion impugned Order-in-Appeal to the extent of discussion at para Nos. 10,11,13 & 14 supra is required to be modified and set aside.

Accordingly, Order-in-Appeal No. BC/375/RGD(R)/2012-13 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals) Mumbai-III is modified to the above extent and the case is remanded back to the original authority for causing verification as stated in these paras. The applicant is also directed to submit all the relevant records/documents to the original authority in this regard. The original authority will complete the requisite verification expeditiously and pass a speaking order within four weeks of receipt of said documents from the applicant after following the principles of natural justice.

16. Revision application is disposed off in the above terms.

Shrawan 31/05/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.208/2021-CX (WZ) /ASRA/Mumbai DATED 31.5.2021

To,
M/s Batra International,
143, 1st Floor, Ashiward Industrial Co-operative Society Ltd.,
Behind Safari Complex, Bhestan, Surat 395 023.

1. The Commissioner of CGST & CX, Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
2. The Commissioner of CGST & CX (Appeals) Raigad, CGO Complex, CBD Belapur, Navi Mumbai - 400 614
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX Belapur, CGO Complex, CBD Belapur, Navi Mumbai - 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.