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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  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No. 195/198/2013-RA / 3274

Date of Issue: 01.02.2021

ORDER NO. 226 /2021-CX (WZ)/ASRA/MUMBAI DATED 24.6.21 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHARWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Presidency Exports

Respondent : Commissioner of Central Excise (Appeals), Mumbai-III

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/729/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II.

## ORDER

This Revision Application is filed by the M/s Presidency Exports, Basement Rushabh Textile Towers, Behind Surat Textile Market, Surat - 395 002 (hereinafter as "the Applicant") against the Order-in-Appeal No. US/729/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II.

2. The issue in brief is that the Applicant, a merchant exporter had exported excisable goods falling under Chapter 54 of Central Excise Tariff Act, 1985 and the goods were manufactured by M/s Jaybharat Dyeing and Printing Pvt. Ltd. The Applicant filed 17 rebate claims totally to Rs. 25,44,190/- and on scrutiny of the claims, they were issued deficiency memo dated 30.01.2012. The adjudicating authority Deputy Commissioner(Rebate, Central Excise, Raigad vide Order-in-Original No. 2345/11-12/DC (Rebate)/Raigad dated 29.02.2012 rejected the claims on the following grounds:

- (i) The exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of Section 5A (1A) of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the Applicant could not have paid duty and did not have the option to pay the duty;
- (ii) The procedure required for self sealing and self certification given in Para 6 of the Chapter 8 of CBEC Manual had not been followed;
- (iii) The Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying;
- (iv) The Name and designation of the authorized signatory not appearing on ARE-I;

- (v) The rebate sanctioning authority was wrongly mentioned as DC C.Ex, Meher Building, Bombay Garage. Mumbai-7;
- (vi) Signature of master of vessel not appearing on shipping bill;
- (vii) Xerox copies of Shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy" and mate receipts and packing list was not enclosed;
- (viii) The declaration under Column 3(a) had no been given and Disclaimer certificate from the manufacturer as given in para 8.3 of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions was not submitted and thus the conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled.;
- (ix) The bank realization certificates had not been submitted;
- (x) The Applicant had failed to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization for payment of duty in respect of the above claims.

3. Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai Zone-II. The Commissioner(Appeals) vide Order-in-Appeal No. US/729/RGD/2012 dated 29.10.2012 upheld the Order-in-Original dated and rejected their appeal.

4. Being aggrieved, the Applicant filed the current Revision Application on the following grounds:

- (i) The Dy. Commissioner (Rebate), Raigad in the said impugned Order-in-Original had recorded his findings as follows:

*"8. Whereas, in such circumstance, i.e. when any goods or class of goods are fully exempted from payment of duty under one Notification and are chargeable to be given rate of duty under another Notification, then in terms of sub-section (1A) of Section 5A of the Central Excise Act, 1944, the manufacturer do no have any option but to avail the full exemption i.e. exemption under Notification No. 30/2004-CE only and*

*need not have to pay any duty. This aspect was clarified by CBEC vide Circular No. 937/27/2010 dated 26.11.2010."*

The Applicant submitted that this view of Ld. Deputy Commissioner was not sustainable and was set aside also by Ld. Commissioner (Appeals) in the impugned Order-in-Appeal (page 3, para 2), which states as follows:

*" The facts of the present case are different. The proviso to Notification No. 30/2004-CE makes it absolutely clear that the exemption contained in the Notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat credit Rules, 2004. The ARE-I s under which the goods were exported clearly declare that the goods have been manufactured availing facility of Cenvat Credit under the provision of Cenvat Credit Rules, 2004. Therefore, it is clear that they could not have been possibly exempt under Notification No.30/2004-CE. Accordingly this ground for rejection of rebate claim cannot be sustained has to be set aside."*

- (ii) The Applicants in unanimity with the Ld. Commissioner (Appeals) and submitted that, a plain reading of Notification No.30/2004-CE dated 09.07.2004 makes it clear & evident that *"nothing contained in the notification shall apply to goods in respect of which credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2004"*. As such, the basis for rejecting the rebate claims cannot be the imposition of Notification No. 30/2004, when the Applicant had already availed Cenvat credit on inputs used in goods exported. This fact was clarified by the CBEC vide Circular No. 845/03/2006-CX dated 01.02.2007. In this they relied in the case of M/s Inter Globe Services [2011 (272) ELT 476 (GOI)] wherein it is stated that

*"9. The C.B.E.C. further issued a Circular No. 845/3/2006-CX, dated 1-2-2007 to clarify the provision of simultaneous availment of Notification Nos. 29/2004-C.E. and 30/2004-C.E both dated 9-7-2004 wherein it has been clearly mentioned that non-availment of credit on inputs is a precondition for availing exemption under this Notification (30/2004-C.E., dated 9-7-2004) and if manufacturers avail input cenvat credit, they would be ineligible for exemption under this Notification (30/2004-C. E., dated 9-7-2004)."*

- (iii) The Deputy Commissioner alleged that the self sealing/self certification was not submitted in proper format by the manufacturer-exporter and the Commissioner (Appeals) alleged that no documentary evidence was produced to prove that the goods were actually opened & examined by the Customs Department. The Applicant submitted that is fact that self sealing/certification was duly done by the manufacturer-exporter, but due to over sight the certificate provided to the authority was not exactly in words as specified in Notification No. 19/2004-CE (NT) dated 06.09.2004. They have requested the manufacture-exporter to provide a similar declaration which will be submitted during the PH of this case. The allegation by Commissioner (Appeals) seems to be without factual base, as all the ARE-1s relating to the instant rebate claim were duly endorsed at appropriate place therein, by the customs official.
- (iv) On the grounds of rejection that that sub-head of impugned goods shown in the Excise Invoice was not matching with that of Shipping Bills, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*"In respect of rejection of claim on the ground that there was difference in chapter Heading Number of the central Excise Tariff declared in the excise Invoice of the exported goods and in corresponding shipping bills, it 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 mention in the Shipping Bill is RITC code classification which is necessarily the same as CET classification. Therefore, there is no requirement of giving CET classification in the shipping hills. 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."*

The Applicant in unanimity with Ld. Commissioner (Appeals) submitted that as stated by him, variation in Chapter heading number as mentioned in Excise Invoices & RITC code number as mentioned in corresponding Shipping Bills is not illegal & cannot be the ground of rejection for the instant rebate claims.

- (v) With regards to non mention of authorised signatory, in respect of Manufacturer/Exporter in ARE-Is Annexure 1 and address of the rebate sanctioning authority wrongly mentioned, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*"The rejection on the ground of non mention of the name & designation of the authorised signatory on ARE-Is and wrong mention of the rebate sanctioning authority as DC C.EX, Meher Building, Bombay Garage, Chowpaty Mumhui-7, I hold that this cannot be the ground for the rejection of the rebate claims when the other corresponding documents prove the export of goods "*

The Applicant in unanimity with Ld. Commissioner (Appeals) submitted that, they ought to be more sincere in mentioning correct name & address of the rebate sanctioning authority. But, not doing that cannot be a legal ground for rejection of filed rebate claims. An application, as to the correct name & address of the rebate sanctioning authority can be submitted before the authority to this effect.

- (vi) With regards to the Signature of master of the vessel is not appearing on the Shipping Bill, and failure to mention "Certified Copy" on the xerox copies of the documents enclosed and non enclosing of mate receipt and packing list, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*" In respect of the rejection on the ground that the signature of the master of the vessel not appearing on the shipping bill,. Photostat copies of shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy" , I hold that these cannot be the ground for rejection of the rebate claims being procedural matter,"*

The Applicant submitted that, they hold unanimity with Ld. Commissioner (Appeals) & states that it is bad in law to reject the rebate claims on this ground as did by the Deputy Commissioner (Rebate) in the impugned Order-in-Original.

- (vii) With regards to the declaration in Col. 3 (a) of ARE-1, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows

*" In respect of rejection on the ground that the declaration of 3(a) in the form ARE-I has not been given by the applicant, I hold that these are the provisions required to be followed by the Applicant wherein they declare the facts about the availment of the facility of Cenvat Credit or benefit of exemption notification. In the absence of that I uphold the findings of the adjudicating authority."*

The Applicant admitting their fault submitted that it was committed inadvertently & assures that no such mistake will be committed in future. As such, requested to condone the same in the interest of justice.

- (viii) With regards to non submission of Disclaimer Certificate from the manufacturer of the goods exported, the Applicant submitted that, in case the exporter is the claimant then no disclaimer certificate is required to be submitted along with the rebate claims. The Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*"In respect of non submission of disclaimer certificate from the manufacturer, I find that the paragraph 8.3 of Chapter 8 of CBEC Manual for supplementary Instructions and the Trade Notice No. 19/Rebate/Raigad/2004 dated 01.06.2004 issued by the Commissioner of Central Excise, Raigad state that Disclaimer Certificate is required to be submitted along with the claim of rebate only when claimant is other than the exporter. In the instant case the Applicants themselves are the claimant exporter and the claim could not be rejected on the ground of non submission of disclaimer certificate."*

Therefore, it is clear & evident from the decision of Ld. Commissioner(Appeals) that it is not just & proper to reject instant rebate claims on the said ground.

- (ix) With regards to the duty paid by the manufacturer on the export goods cannot be segregated from the entire accumulated Cenvat

credit, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*"The other main ground on which the adjudicating authority has rejected the claims is that the Applicants did not produce evidence of the genuineness of the Cenvat credit availed by the processors. The Applicants are merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit by manufacturer. In the instant case, the Range Superintendent of the manufacturer had informed that the supplier of grey fabrics of the manufacturer namely M/s Parth Apparels,..... are fake bogus-non-existing firms. The credit had been availed by the manufacturer who may have availed the said Cenvat credit fraudulently and the manufacturer of the Applicants may also be a party in the said fraudulent availment of Cenvat Credit. The bona fide nature of transaction between the manufacturer-exporter and supplier-manufacturer is imperative for admissibility of the rebate claim filed by the merchant exporter.*

*It was held by the Hon'ble Bombay High Court in Union of India v/s Rainbow Silks [2011 (274) ELT 510 (Bom.)] .....*

*In view of the above, the impugned order is upheld and the appeal is rejected."*

The Applicants submitted that it was clear and evident from the findings of both the lower authorities that they have rejected the rebate claims on sheer assumptions, presumptions or surmise only. No documentary evidences to the support of such assumption are provided by any of the lower authorities. In the matter of M M Mathew Hon'ble Supreme Court [AIR 1978 SC 15171] has held that - *that strong suspicion, strange coincidence and grave doubts cannot take place of legal proof.* As such, the impugned the Order-in-Original and Order-in-Appeal passed by the lower authorities rejecting the rebate claims on the ground of assumption, presumption & surmises cannot be sustained & is bad in law those need to be set aside & quashed.

- (x) Furthermore, to deny the rebate to merchant exporter on duty paid goods duly exported by them, for the fault of the manufacturer was just strangulation of justice only.



(xi) The Applicant prayed that may please

(a) their appeal be allowed and the Order-in-Original and Order-in-Appeal be set aside & quashed.

(b) hold that the Applicant is very much entitled for whole of rebate paid for inputs used in goods exported in terms of Rule 18 of Central Excise Rules, 2002.

5. Personal hearing was fixed for 22.01.2018 and 23.02.2018, but no one appeared for the hearing. Still in view of a change in the Revisionary Authority, hearing was granted on 04.02.2021 and 18.02.2021. On 18.02.2021, Shri G.B. Yadav, Counsel appeared online on behalf of the Applicant. No one appeared on behalf of the Respondent. The Applicant reiterated the submissions and submitted that certain procedural lapses cannot take away his substantial benefit when facts of export of duty paid goods is not in doubt.

6. 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.

7. Government observes that the rebate claim amounting to Rs. 25,44,190/- filed by the Applicant were rejected by the Original Authority on the following grounds:

- (i) The exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of Section 5A (1A) of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the Applicant could not have paid duty and did not have the option to pay the duty;
- (ii) Certification of self sealing not made on copies of ARE-1s;
- (iii) The Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying;

- (iv) The Name and designation of the authorized signatory not appearing on ARE-I;
- (v) Particulars of Authority with whom claim shall be filed was not shown correctly in ARE-1s;
- (vi) Signature of master of vessel not appearing on shipping bill;
- (vii) Xerox copies of Shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy" and mate receipts and packing list was not enclosed;
- (viii) Declaration at Sr. No, 3(a) not scored out properly had not been given and Disclaimer Certificate not submitted
- (ix) The bank realization certificates had not been submitted;
- (x) The Applicant had failed to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization for payment of duty in respect of the above claims.

8. Government notes that the Notification No.19/2004-CE(NT) dated 06.09.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions or issues are discussed in following paras.

9. Issue : The exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of Section 5A (1A) of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the Applicant could not have paid duty and did not have the option to pay the duty.

9.1 Government observes that this issue has been decided by the Commissioner(Appeals) in the findings -

*" The facts of the present case are different. The proviso to Notification No. 30/2004-CE makes it absolutely clear that the*

*exemption contained in the Notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat credit Rules, 2004. The ARE-1s under which the goods were exported clearly declare that the goods have been manufactured availing facility of Cenvat Credit under the provision of Cenvat Credit Rules, 2004. Therefore, it is clear that they could not have been possibly exempt under Notification No.30/2004-CE. Accordingly this ground for rejection of rebate claim cannot be sustained has to be set aside."*

- 9.2 Government finds that a plain reading of Notification No.30/2004-CE dated 09.07.2004 makes it clear & evident that *"nothing contained in the notification shall apply to goods in respect of which credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2004"*. Further this fact was clarified by the CBEC vide Circular No: 845/03/2006-CX dated 01.02.2007 -

*"2. The issue has been examined. It is seen that proviso to notification No. 30/2004-CE dated 9.7.2004 states that "nothing contained in this Notification shall apply to the goods in respect of which the credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2004". Therefore, it is clarified that non-availment of credit on inputs is a precondition for availing exemption under this notification and if manufacturers avail input tax credit, they would be ineligible for exemption under this notification. Reversal of credit on a later date would not suffice to make them eligible for this exemption."*

Hence, Government is in agreement with the findings of the Commissioner(Appeals) that on this ground the rebate claim cannot be rejected.

10. Issue: Certification of self sealing not made on copies of ARE-1s.
- 10.1 In respect of issue regarding Certification of self sealing not made on copies of ARE-1s, Government observes that Para (3)(a)(xi) relating to procedure of Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 provides that

*"(xi) Where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved*

*premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the application to the Superintendent or Inspector of Central Excise having jurisdiction over the factory or warehouse within twenty four hours of removal of the goods;"*

10.2 Government observes that in the instant case, the manufacturer on the face of ARE-1s certified that "EXPORT UNDER DEPB SCHEME, EXPORT UNDER REBATE, EXPORT UNDER SELF REMOVAL PROCEDURE" and "WE HAVE NO OBJECTION IF THE C.EXCISE DUTY REFUND TO THE EXPORTER. THE ABOVE MENTIONED CARTONS ARE PACKED AND SEALED IN MY PRESENCE." and the impugned goods were cleared from the factory under ARE-1s with remarks in PART-A - "THIS GOODS COVERED UNDER THIS ARE-1, HAVE BEEN REMOVED WITHOUT PHYSICAL VERIFICATION & SEALING OF C.EXCISE AUTHORITIES ". Government however observes that failure to comply with the provision of self-sealing and self-certification was laid down in para 3(a)(xi) of the Notification No. 19/2004-C.E. (N.T.) 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 is available to correlate exported goods with goods cleared from the factory.

10.3 The Applicant submitted that it is fact that self sealing/certification was duly done by the manufacturer-exporter, but due to over sight the certificate provided to the authority was not exactly in words as specified in Notification No. 19/2004-CE (NT) dated 06.09.2004. They have requested the manufacture-exporter to provide a similar declaration which will be submitted during the PH of this case. The Government finds that the Applicant has not produced any

documentary evidence before this authority to correlate exported goods with goods cleared from the factory.

11. Issue: The Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying.

11.1 On the grounds of rejection that that sub-head of impugned goods shown in the Excise Invoice was not matching with that of Shipping Bills, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*"In respect of rejection of claim on the ground that there was difference in chapter Heading Number of the central Excise Tariff declared in the excise Invoice of the exported goods and in corresponding shipping bills, it 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 mention in the Shipping Bill is RITC code classification which is necessarily the same as CET classification. Therefore, there is no requirement of giving CET classification in the shipping hills. 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."*

The Government is in agreement with the findings of the Commissioner(Appeals) and hence in this ground rebate claims cannot be rejected.

12. Issue: The Name and designation of the authorized signatory not appearing on ARE-I and particulars of Authority with whom claim shall be filed was not shown correctly in ARE-1s.

12.1 On the said issue, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*"The rejection on the ground of non mention of the name & designation of the authorised signatory on ARE-1s and wrong mention of the rebate sanctioning authority as DC C.EX, Meher Building, Bombay Garage, Chowpaty Mumhui-7, I hold that this cannot be the ground for the rejection of the rebate claims when the other corresponding documents prove the export of goods "*

And the Applicant submitted that *"they ought to be more sincere in mentioning correct name & address of the rebate sanctioning authority. But, not doing that cannot be a legal ground for rejection of filed rebate claims. An application, as to the correct name & address of the rebate sanctioning authority can be submitted before the authority to this effect."*

12.2 Government is in agreement with the findings of the Commissioner(Appeals) and further, the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 itself shows the procedural infractions which can be condoned. Hence on this grounds the rebate claim cannot be rejected.

13. Issue: Xerox copies of Shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy" and mate receipts and packing list was not enclosed.

13.1 In this regard, Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows:

*" In respect of the rejection on the ground that the signature of the master of the vessel not appearing on the shipping bill,. Photostat copies of shipping bill/mate receipt/bill of lading etc. not bearing the necessary certificate as "certified true copy" , I hold that these cannot be the ground for rejection of the rebate claims being procedural matter,"*

Government is in agreement with the findings of the Commissioner(Appeals) and further, the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 itself shows the procedural infractions which can be condoned. Hence on this grounds the rebate claim cannot be rejected

14. Issue: Declaration at Sr. No, 3(a) not scored out properly had not been given.

14.1 With regards to the declaration in Col. 3 (a) of ARE-1, the Ld. Commissioner (Appeals) had recorded his findings in the impugned Order-in-Appeal as follows

*" In respect of rejection on the ground that the declaration of 3(a) in the form ARE-I has not been given by the applicant, I hold that these are the provisions required to be followed by the Applicant wherein they declare the facts about the availment of the facility of Cenvat Credit or benefit of exemption notification. In the absence of that I uphold the findings of the adjudicating authority."*

Here the Applicant admitting their fault submitted that it was committed inadvertently & assures that no such mistake will be committed in future. As such, requested to condone the same in the interest of justice.

14.2 Government finds that the Applicant in few ARE-1s have ticked the relevant part of Col. 3(a) stating that that they are availing Cenvat Credit and while in others they have not and the details are given below:

Sr.No.	ARE-1 No & dt	Col.3(a) ticked or not
1	224/04-05 dt 10.08.04	No
2	457/04-05 dt 18.02.05	No
3	458/04-05 dt 18.02.05	No
4	330/04-05 dt 29.10.05	No
5	331/04-05 dt 29.10.05	No
6	217/04-05 dt 30.07.05	No
7	218/04-05 dt 30.07.05	No
8	225/04-05 dt 10.08.05	No
9	519/05-06 dt 30.03.05	Ticked
10	257/05-06 dt 21.03.06	Ticked
11	154/05-06 dt 19.09.05	Ticked
12	186/05-06 dt 17.11.05	Ticked
13	143/05-06 dt 01.09.05	Ticked
14	29/06-07 dt 01.06.06	Ticked
15	13/06-07 dt 01.05.06	Ticked
16	30/06-07 dt 01.06.06	Ticked
17	42/04-05 dt 28.05.04	Ticked

Moreover, GOI in its Order Nos. 154-157/2014-CX dated 21.04.2014 in Re : Socomed Pharma Pvt. Ltd. [2014 (314) ELT 949 (GOI)] had held that even merely ticking a wrong declaration in ARE-form cannot be a basis for rejection substantial benefit of rebate claim - Rule 18 of Central Excise Rules, 2002. Hence Government finds that on this ground the rebate cannot be denied to the Applicant.

15. Issue: Disclaimer Certificate not submitted.
- 15.1 As regards Disclaimer Certificate not submitted by the Applicant, Government observes that the same was mentioned by the manufacturer on the face of all the ARE-1s - *"WE HAVE NO OBJECTION IF THE C.EXCISE DUTY REFUND TO THE EXPORTER. THE ABOVE MENTIONED CARTONS ARE PACKED AND SEALED IN MY PRESENCE."* . The Government finds that as manufacturer M/s Jay Bharat Dyeing and Printing (P) Ltd had submitted the disclaimer certificate, on this ground the rebate cannot be denied
16. Issue: The bank realization certificates had not been submitted.
- 16.1 On this issue, the rebate authority had rejected the claim on the ground that despite being given several opportunities, the Applicant had not submitted the bank realization certificates. Government observes that the Commissioner(Appeals) was silent on this issue and the Applicant in the Revision Application is also silent on this issue and had not submitted any bank realization certificate.
- 16.2 Government finds that though Bank Realization Certificate (BRC) is not a specified document for claiming rebate of duty from the department, but the Applicant have to submit copies of BRC to prove that payment was received from their overseas buyer and thereby precious foreign exchange had been earned for the nation.
17. Issue: The Applicant had failed to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit and subsequent utilization for payment of duty in respect of the above claims.
- 17.1 On this issue, the Applicant submitted that it was clear and evident from the findings of both the lower authorities that they have rejected the rebate claims on sheer assumptions, presumptions or surmise only. No documentary evidences to the support of such assumption are provided by any of the lower authorities. Government observes



that jurisdictional Range Superintendent of the manufacturer had informed vide letter dated 16.05.2006, that the supplier of grey fabrics of the manufacturer namely M/s Parth Apparels, M/s Iscon Synthetics, M/s Krishna Enterprises, M/s Hinal Textiles, M/s Jeegar Industries, M/s Shree Ram Textiles, M/s Rahul Textiles, M/s Ajay Textiles, M/s Kanjibhai Atmaram, M/s Babubhai Ganeshas, M/s Sharaden Babubhai, M/s Tirupati Industries, M/s Sai Industries, M/s Dhanlaxmi textiles are found fake/bogus/Non-existing firms. Government notes that the contention of the Commissioner (Appeals) for rejecting the rebates was that the duty was paid on the exported goods through non-existent firms / bogus credit which amounted to non-payment.

17.2 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 & Printing Mills (P) Ltd. [2007 (219) E.L.T. 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. In a judgement in the case of Chintan Processor [2008 (232) E.L.T. 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 nonexistent, 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."*

17.3 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 Gujarat, 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."*

17.4 Government also relies 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, Mumbai, in similar circumstances i.e., 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.

17.5 In view of above, Government finds that duty paid character of exported goods was not proved, which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002. Therefore, Government holds that the genuineness of the duty paid character of goods need to be verified by the original authority.

18. As such, Government sets aside the Order-in-Appeal No. US/729/RGD/2012 dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II and remands the matter to original authority for doing the needful.

19. The Revision Application filed by the Applicant is decided on above terms.

  
24/6/21.  
(SHRAWAN KUMAR)

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

ORDER No. 226/2021-CX (WZ)/ASRA/Mumbai Dated 24.6.21

To,  
M/s Presidency Exports,  
Basement Rushabh Textile Towers,  
Behind Surat Textile Market,  
Surat - 395 002.

Copy to:

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