

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. 195/215/13-RA/3205

Date of Issue: 01.07.2021

ORDER NO. 227/2021-CX (WZ) /ASRA/Mumbai DATED 21.6.2021 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/365/RGD(R)/2012-13 dated 31.10.2012/16.11.2012 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.

Applicant : M/s Rameshwar Textile Mills P. Ltd. Kalbadevi, Mumbai.

Respondent : Commissioner of Central Excise, Raigad.

ORDER

This Revision Application has been filed by M/s Rameshwar Textile Mills P. Ltd. Kalbadevi, Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/365/RGD(R)/2012-13 dated 31.10.2012/16.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai - III.

2. Brief facts of the case are that the applicant is a manufacturer/merchant exporter and had filed twelve rebate claims totally amounting to Rs. 4,06,175/- (Rupees Four Lakh Six Thousand One Hundred Seventy Five Only) under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE(NT) dated 06.09.2004 in respect of duty paid on goods exported.

3. The rebate sanctioning authority vide Order in original No. 2651/11-12/DC(Rebate)/Raigad dated 30.03.2012 rejected the aforesaid 12 (Twelve) rebate claims on the following grounds:-

3.1 All the processors of goods have not availed the benefit of Notification No. 30/2004-CE dated 09.07.2004, granting full exemption, such payments cannot be considered as duty in terms of Section 3 of CEA, 1944.

3.2 Chapter sub-heading of goods shown in the invoice did not tally with that in the shipping bill.

3.3 Name and designation of the authorized person is not mentioned on the ARE-1. NOC from manufacturer also not submitted.

3.4 Difference in Seal numbers as appearing in the Shipping Bills and the Bills of lading pertaining to same consignment in respect of rebate claim creates doubt as to whether the goods exported were the same as were cleared from the factory or otherwise..

3.5 Central Excise invoices do not contain the colour code to indicate whether it is original/duplicate or triplicate copy. Submission of Shipping Bills, Mate receipt, Bills of lading without certification as true copy.

3.6 There is no declaration of Self sealing / self certification in the ARE-1's as required under Rule 18 in respect of export goods which are mandatory.

3.7 No declaration has been given at Sr No. 3 and 4 on the ARE-1 pertaining to rebate claim No. 34564 at the time of export of goods.

3.8 The applicant's name figures in the Alert circular as units who have availed fraudulent Cenvat Credit on invoices issued by Fake/ bogus suppliers of grey fabrics.

Hence duty payment made on export of goods could not be ascertained to have been effected out of genuine accumulated cenvat credits.

3.9 The authenticity of credit availed by the processors on the strength of invoices so received from grey fabrics suppliers and subsequent utilization of such credit for payment of excise duty on exports, was required for which the applicant was given opportunity for submission of documents/ records but none were produced. Hence duty paid by processors out of accumulated cenvat credits is not free from doubt.

3.10 The claim is lodged with Rebate sanctioning authority to whom the rebate claim filed is not addressed to.

3.11 The name of vessel appearing in the ARE-1 and the Bill of lading are different.

3.12 The quantity of goods in ARE-1 and Shipping Bills do not tally creating doubt about the authenticity of the exact quantity of goods exported.

3.13 Original and duplicate copy of ARE-1 in respect of rebate claim No. 34574 which is required to be endorsed by the Customs Authorities as a proof of export upon verification at the port has not been submitted with the claim.

3.14 Bank realization certificate which establishes goods cleared for export has actually been exported is not furnished.

4. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III. The Commissioner (Appeals) vide Order in Appeal No. BC/365/RGD(R)/2012-13 dated 31.10.2012/16.11.2012 observed as under :-

4.1 The Notification No. 30/2004 dated 09.07.2004 is a condition notification and hence manufacturer is at liberty to avail or not avail the said notification. Rejection of rebate on this ground is not valid and legal.

4.2 One of the major reason for rejection of the rebate claim is that the processors from whom the goods were purchased have availed Cenvat credit on bogus invoices and hence no duty is paid on the finished goods from the fraudulently availed Cenvat credit. It is a fact that unless the accumulated credits are genuine, the duty paid there from cannot be termed as actually duty paid. Hence, the rejection on this count is valid for the reasons that the name of the applicant, a manufacturer /exporter is appeared in the Alert Circular No. V / GR-I / REB/Textile/Alert/ 10, issued by the Raigad Commissionerate. The said circular was issued for the reasons that the said manufacturer cum exporter had purchased grey fabrics from non-existing units and availed Cenvat credit on bogus invoices.

4.3 The reason for rejection on the ground that the Chapter sub-head of goods shown in invoices do not tally with that in shipping bills. The applicant has chosen to remain silent on this count. Such discrepancies prove that the goods cleared for

export were not the goods actually exported. The onus is on them to prove that the goods cleared for export were the one which have been exported.

4.4 Rejection of the rebate claim on the ground that NOC from the manufacturer not submitted; that there was rem mention of Self sealing and self supervision certificate on the ARE-1's ; that the seal No. on the Shipping Bills does not tally with the Bills of Lading is correct in that different seal Nos.; that there was no certification as true copy of the Shipping Bills, Mate receipts and Bills of lading as also genuineness of the central excise invoice submitted on account of no colour code indicating original/duplicate or triplicate; that the ARE-1 is there is no declaration in respect of Sr. No. 3 & 4 of the ARE 1; that the address of the rebate sanctioning authority is not written; that the name of vessel appearing in the ARE-1 and the Bill of lading are different; that mismatching of the Chapter sub-heading of the goods exported in the Central Excise Invoices with the Shipping Bill are all major deficiencies in the claim. The right to claim follows after the conditions laid down in the notification have been followed scrupulously. These conditions cannot be set aside in the guise of procedural lapses.

4.5 It has also been observed by the Adjudicating Authority that original and duplicate copies of the ARE 1, in respect of Rebate Claim No. 34574 dt. 13.08.2007 and a complaint to that effect lodged with the Police Department. GOI vide order 1245-1247/2011-CX, dated 28-9-2011 in the case of Bajaj Electrical Ltd (2012 (281) E.L.T. 146 (G.O.I.) observed that in case of exports on payment of duty under rebate claim there is no such provision to show proof of export on the basis of collateral evidence in the absence of original/ duplicate ARE-1- No force in applicant's plea that lapse should be considered a procedural lapse of technical nature.

4.6 It is also observed that when the applicant's name figure in the Alert circular of the department, they ought to have provided evidence to the effect that the duty paid on exports were out of genuine accumulated Cenvat credits which they have failed to do. However it cannot be termed as coincidence that the several lapses as pointed above could have occurred simultaneously. Hence the genuineness of the rebate claim is not beyond doubt.

4.7. The applicant was issued a deficiency memo which cannot be considered on par with a show cause notice. Hence, limitation clause discussed in Section 11A of CEA 1944 would not be applicable.

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 :

5.1 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. Thus the finding of the Commissioner (Appeals) made in para 7 is not correct on the point of law.

5.2 In 9 cases (out of 12) they are merchant exporter and have purchased the goods and have paid the duty and exported which is covered by the judgment of the Gujarat High Court in the case of Roman Overseas. Against this order revenue had preferred SLP in Supreme Court which is dismissed. Thus the issue has attained finality.

5.3 There is nothing in the show cause notices dated 28.02.2006 & 31.05.2006 issued by the adjudicating authority that they are under Alert List for the goods exported as indicated in above 12 rebate claims and baseless averments made in the show cause notice that they are in Alert List have no place for the relevant goods exported.

5.4 There is nothing in the show cause notices dated 28.02.2006 & 31.05.2006 to show that the appellant is party to fraud at manufacturer's end or at input supplier's end for the above 12 rebate claims.

5.5 The finding of the Commissioner (Appeals) in para 8 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 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.

5.6 The rejection of the rebate claims on the grounds that declaration of self sealing not given on the face of ARE-1 etc. is not proper considering the judgment in the case of SRF Polymers Ltd. reported in 2012 (284) ELT 473 (Commr. Appl.).

5.7 The Commissioner (Appeals) finding in para 9 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.

5.8 The findings of the Commissioner (Appeals) as regards to duty payment certificate issued by the Range Superintendent is not correct as the scenario and evidences never change and remain same forever and it was the duty of the rebate sanctioning authority to examine the documents of processors or the documents pertaining to duty payment certificates submitted by the appellant. Once, duty paid

character of the export goods have been established, there is no cause to deny the rebate claims.

5.9 The question of self sealing and self certification have been satisfied by them by producing necessary certificate which have been ignored by the lower authorities. They rely on the case of SRF Polymers Ltd. reported in 2012 (284) ELT 473 (Commr. Appl.),

5.10 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.) 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.

5.11 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.

5.12 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 .The said 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. In view of this, the orders of the lower authorities are not sustainable in law.

5.13 The rebate claims have been filed in April-2005 to September-2005 whereas the deficiency memo cum show cause notices have been issued on 28.02.2006 & 31.05.2006 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. Thus, the orders of the lower authorities are not correct in law and required to set aside in the interest of justice.

5.14 The lower authorities have erred in not appreciating the legal plea properly that the deficiency memo cum show cause notices dated 28.02.2006 & 31.05.2006 was issued to them for the rebate claims filed during April -2005 to September-2005 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)E.L.T. 340 (Guj.) In view of this, the entire show cause notice is

time barred. Consequently, the appeal is required to be allowed with consequential relief.

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 interalia submitted a detailed submission that OIA & OIO suffer from factual inaccuracies; that Cenvat Credit used for payment of duty on exported goods is genuine and not in doubt; that further, significant portion of duty was paid in cash; that Only supplier i.e. M/s Mullaji Prints Pvt. Ltd. has not been issued even a show cause notice for denial of credit. Procedural lapses cannot take away substantive right when export of duty paid goods is not in doubt and therefore, rebate be allowed. Procedural lapses cannot take away substantative right when export of duty paid goods is not in doubt.

7. Vide additional written synopsis and submissions dated 14.02.2021, the applicant mainly contended that

- They are a process house who undertake the processing on grey fabrics and processed fabrics are returned to the merchant. They also procure duty paid grey fabrics and processes the same and exports as manufacturer exporter. They send the grey fabrics to another processor who undertakes the processing of fabrics and returns the same duly processed under their invoices and they export the said goods. In this case grey fabrics were sent to M/s. Mullaji Prints Pvt. Ltd., Surat who after undertaking process returned the goods to them under their invoices wherein they have made the payment from Cenvat Credit as well as PLA as indicated in their invoices.
- In para 5 of adjudication order dated 30.03.2012, their detailed explanation to the deficiency memo is mentioned. The explanations tendered in para 5 of the adjudicating order which are based on evidences are not required to be ignored by giving findings otherwise so as to deny the rebate claims. However, the adjudicating authority without any concrete evidences on record to his findings rejected the rebate claims on technical ground.
- The adjudicating authority rejected the rebate claims by passing order dated 30.03.2012 on technical grounds without considering the explanations tendered and mentioned in para 5 of his order.
- The Commissioner (Appeals) vide order dated 30.10.2012 have gone one step beyond to the deficiency memo and which is not the allegation in the deficiency memo or findings of the adjudicating authority in his order dated 30.03.2012. Commissioner (Appeals) have given findings from para 6 of her order dated 30.10.2012 wherein in para 7, she has given findings that - *"One of the major reason of the rebate claim is that the processor from whom the goods have purchased have availed Cenvat Credit on bogus invoices and hence no duty paid on the finished goods from the fraudulently availed Cenvat Credit. It is a fact that unless the accumulated credit are genuine the duty paid there from cannot be termed as actually duty paid. Hence, the rejection on this count is valid for the reasons that the name of the said appellatant, a manufacturer/exporter is*

appeared in the Alert Circular No. V/ Gr.I/ Reb/ Textile/ Alert/ 10 issued by the Raigad Commissionerate. The said circular was issued for the reasons that the said manufacturer cum exporter had purchased grey fabrics from non-existing units and availed Cenvat Credit on bogus invoices..... Further, in para 11 of her findings, it is stated that - "It is also observed that the when the appellant's name figured in the Alert Circular of the Department, the appellant ought to have provided evidence to the effect that the duty paid on exports were out of genuine accumulated Cenvat Credit which they have failed to do. " The above findings are not based on any concrete evidences. Further, the processors had made payment from PLA also. In this connection, it is to submit that they had challenged such allegations before the Tribunal, Ahmedabad vide Appeal No. E/1708, 1842, 1843/2009 and in this case a detailed order has been passed by the Tribunal vide order dated 01.11.2018 and the Hon'ble Tribunal have allowed the appeal brushing aside the allegations made against them. In view of this, the findings made by Commissioner (Appeals) in her order dated 30.10.2012 cannot sustain considering division of the Tribunal Order dated 01.11.2018. (Copy of the Tribunal's Order dated 01.11.2018 is enclosed).

- From the record of export invoices (applicant has given export invoice wise tabular information showing details of payment made in Cash and by way of Cenvat Credit) it is crystal clear that out of rebate claims of Rs.4,06,175/-, the payment of Rs. 1,31,176/- was made in Cash from PLA and Balance amount was paid from credit register. Thus, the findings of both the lower authorities are without appreciating the factual evidences on record.

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) NOC from the manufacturer not submitted; No Self Sealing and self supervision certification on the ARE-1s; the seal No. on the shipping bill does not tally with the Bills of Lading; there was no certification as true copy of the shipping bills, Mate receipts and Bills of Lading as also genuineness of the central excise invoices submitted on account of no colour code indicating original/duplicate or triplicate; no declaration on Sr. No. 3 & 4 of the ARE-1, address of the rebate sanctioning authority is not written; the name of vessel appearing in the ARE-1 and the Bill of Lading are different (iv) Non submission of original and duplicate copies of ARE-1s and (v) the name of the applicant figured in the Alert circular of the department and therefore they ought to have provided

evidence to the effect that the duty paid on exports were out of genuine accumulated Cenvat Credits which they failed to do.

10. As regards mismatch in description and 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 Lading 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 seal No. on the shipping bill does not tally with the Bills of Lading; there was no certification as true copy of the shipping bills, Mate receipts and Bills of Lading as also genuineness of the central excise invoices submitted on account of no colour code indicating original/duplicate or triplicate; no declaration on Sr. No. 3 & 4 of the ARE-1, address of the rebate sanctioning authority is not written; the name of vessel appearing in the ARE-1 and the Bill of Lading are different they can be treated as procedural lapses. 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 these are procedural requirement. Such procedural infractions cannot override substantive compliance. Moreover, the applicant vide its reply dated 13.04.2006 to the Deficiency Memo has

clarified all the aforesaid infirmities raised (para 5 of the Order in Original No. 2561/11-12/DC(Rebate)Raigad/ dated 30.03.2012). Therefore these cannot be the grounds for rejection of the rebate claims if there is sufficient corroborative documentary evidence to establish that the duty paid goods have in fact been exported.

13. As regards non submission of original and duplicate copies of ARE-1s, Government observes that Hon'ble High Court of Bombay in its judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (WP No. 3102/2013 & 3103/2013) reported as 2013 (293) E.L.T. 641 (Bom.), has held that rebate sanctioning authority shall not reject the rebate claim on the ground of non-submission of original and duplicate copies of ARE-1 forms if it is otherwise satisfied that conditions for grant of rebate have been fulfilled. Similar view has been taken by Hon'ble High Court, Gujarat in Raj Petro Specialities Vs Union of India [2017(345) ELT 496 (Guj)] while deciding the identical issue. Government further observes that relying on the Hon'ble High Court of Bombay's judgment dated 24-4-2013 in the case of M/s. U.M. Cables v. UOI (referred above), GOI in its order in RE : United Phosphorus Ltd. [2015(321)ELT 148(GOI)] has held that even if copy of original and duplicate copies of ARE-1s are not submitted, the export of duty paid goods may be ascertained on the basis of other collateral documents. Government, therefore, applying the ratio of above said judgments of Hon'ble High Court of Bombay & Gujarat and GOI Order, is of the view that the proof of export may be examined on the basis of collateral evidences where original and duplicate ARE-1 form are not submitted.

14. Government further observes that the rebate claims were rejected mainly as the applicant did not produce evidence to the effect that the duty paid on exports were out of genuine accumulated Cenvat Credits 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 *"name of the applicant, a manufacturer / exporter is appeared in the Alert Circular No.V/ GR-I / REB/ Textile/Alert/10, issued by the Raigad Commissionerate. The said circular was issued for the reasons that the said manufacturer cum exporter had purchased grey fabrics from non-existing units and availed Cenvat credit on bogus invoices. Whereas the applicant in its submissions has contended that " in this case grey fabrics were sent to M/s. Mullaaji Prints Pvt. Ltd., Surat who after undertaking process returned the goods to*

them under their invoices wherein they have made the payment from Cenvat Credit as well as PLA as indicated in their invoices". 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 DGCEI & Local Central Excise and Customs Preventive Formations and the name of the applicant appeared in the Alert Circular issued by Raigad Commissionerate. 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. against the applicant or its manufacturer/suppliers in respect of Alert Circular No. No.V/ GR-I / REB/ Textile / Alert/10, issued by the Raigad Commissionerate. 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. Moreover, the applicant had had challenged similar allegations before the Tribunal, Ahmedabad vide Appeal No. E/1708, 1842, 1843/2009 and in this case a detailed order has been passed by the Tribunal on 01.11.2018 allowing the appeal. Whether the said CESTAT Order also relates to invoices issued by certain parties involved in the present case and if so, whether the said Order has been accepted by the department or not, needs to be verified. 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 Order-in- Appeal No. BC/365/RGD(R)/2012-13 dated 31.10.2012/ 16.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai - III is modified to the extent discussed above 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.


21/6/21
(SHRAWAN KUMAR)

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

ORDER No. 227/2021-CX (WZ) /ASRA/Mumbai DATED 21.6.2021

To,

M/s Rameshwar Textile Mills Pvt. Ltd.,
3rd Floor, RTM House, Plot No. 3,
Unity Industrial Estate,
Udhna Sachin Road,
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.