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SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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.198/05/2014-RA/3491 Date of Issue: 07.09.2021

ORDER NO. 237/2021-CX (WZ)/ASRA/MUMBAI DATED 30.06.2021 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.

Applicant : Commissioner of Central Excise, Mumbai -I.

Respondent : - M/s G.N. International

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BPS/102 & 103/M-I/2013 dated 12.10.2013 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-I.

ORDER

This Revision Application is filed by Commissioner of Central Excise, Mumbai -I (hereinafter referred to as "Applicant") against the Order-in-Appeal No. BPS/102 & 103/M-I/2013 dated 12.10.2013 passed by the Commissioner(Appeals), Central Excise, Mumbai Zone-I.

2. Brief fact of the case are Merchant Export, M/s G.N. International, 154, Ashoka Shopping Centre, 2nd floor, G.T. Complex, Mumbai 400 001 (hereinafter referred to as "Respondent") are engaged in export of duty paid fabrics and the duty paid thereof were being claimed by them as rebate.

(i) On the basis of intelligence, that the goods exported by them were not the same goods as mentioned in the duty paying documents on which rebate of duty were sought by the Respondent, the rebate claims allowed were re-examined. Investigations conducted in this regard revealed that the Appellants had allegedly contravened the provisions of Rule 12 (1) of the Central Excise Rules, 1944 read with Notification No. 197/62-CE dated 17.11.1962, 41/94 dated 22.09.1994 and Trade Notice No, 66 (MP) (UMP)/General/(12)/1975 dated 09.04.1975.

(ii) Accordingly, nine (9) Show Cause Notices were issued to the Respondent for recovery of the rebate amount of Rs. 23,62,903.96/- which was sanctioned to the Respondent and for imposition of penalty.

(iii) These Show Cause Notices were adjudicated by the Additional/Deputy Commissioner of Central Excise, Mumbai-I Commissionerate, confirming there under the demands of duty and imposing penalties under Section 11AC of the Central Excise Act, 1944 on the Respondent and under Rule 209A on Shri Thakur N Mulani, Proprietor of Respondent. The details of the Orders-in-Original are as given below:

Sr.No.	Orders-in-Original
1	37/98 dated 11.03.1998
2	2/98 dated 06.02.1998
3	Nil dated 22.03.1998
4	4/98 dated 06.02.1998
5	5/98 dated 06.02.1998
6	6/98 dated 06.02.1998
7	24/98 dated 10.02.1998
8	25/98 dated 10.02.1998
9	26/98 dated 10.02.1998

(iv) Being aggrieved, the Respondent filed appeals before the Commissioner (Appeals), C. Ex. Mumbai-I who vide Order-in-Appeal No. SDK (671-683)671-683/M-I/99 dated 31.05.1999 confirmed the recovery of the rebate amount from the Respondent but set aside the penalty imposed under Section 11AC of the Central Excise Act, 1944 and as regard imposition of personal penalty under Rule 209A, the order was silent.

(v) The matter was agitated further before the Revisionary Authority, who vide GOI No. 36-44/2000 dated 06.04.2000 remanded the matters back to the original authority for proper scrutiny of the documents and for raising demands wherever discrepancy had been found in accordance to law.

(vi) In the remand proceedings, the Additional Commissioner, Central Excise, Mumbai-I vide Order-in-Original No. 02/M-I/2013-14/Addl dated 06.05.2013 again confirmed the demand of duty of Rs. 23,62,503.96/- under proviso to Section 11A (2) of the Central Excise Act, 1944 along with interest and imposed an penalty of Rs. 23,62,000/- on the Respondent and Shri Thakur N Mulani, Proprietor of Respondent under Rule 209 A of the Central Excise Rules, 1944 on the following grounds:-

(a) The Respondent did not submit the reconciliation statement before the Revisionary Authority, stating that their files have been misplaced in transit, inspite of repeated reminders. The Respondent could have obtained the reconciliation statement from

the Revisionary Authority or they could have submitted a soft copy thereof to the department for verification.

(b) The Respondent had submitted bogus NOC from the sellers of goods to claim the rebate fraudulently. This fact was corroborated by almost all the sellers.

(c) The goods cleared on payment of duty were, infact, not exported at all and that what was exported was similar goods procured from the market.

(d) Not a single bill of the consignees could be traced in the purchase bill file maintained by the Respondent nor a single entry in respect of such bills found in the purchase Register or Ledgers of the Respondent.

(e) The requirement to submit disclaimer certificate is not of technical or procedural in nature since the rebate claim were fraudulently made.

(f) Since the rebate had been claimed fraudulently, the show cause notices issued within the extended period of 5 years under Section 11A of the Central Excise Act, 1944 were not hit by the bar of limitation of time.

(g) Although the Respondent had stated before the Revisionary Authority that they had all the documents with them, they had not produced any corroborative evidences, documents and reconciliation statements about the goods in dispute in support of their defense to substantiate the claims.

(h) The forged/fabricated documents submitted by the Respondent for claiming the rebate and the statements of Shri Thakur N Mulani, Proprietor and Shri Mohan Nanjappa Patel, Accountant indicated that the charges leveled in the nine Show Cause Notices are sustainable.

(vii) Aggrieved, the Respondent filed an appeal before the Commisssioner(Appeal), Central Excise, Mumbai-I. The Commissioner(Appeals) vide Order-in-Appeal No. BPS/102 & 103/M-

I/2013 dated 12.10.2013 set aside the impugned orders and allowed the appeals with all its consequential relief and since the demands in question were found not sustainable, the penalty imposed on Respondent and Shri Thakur N Mulani, Proprietor was also set aside.

3. Aggrieved, the Applicant Department filed the current Revision Application on the grounds:

(i) The Order-in-Appeal dated 12.10.2013 passed by Commissioner (Appeals) is not proper and legal.

(ii) Going by the legal provisions involved in the instant issue, the conditions of the said Rule 12 of the Central Excise Rules, 1944 specifically requires that the exciseable goods should be duty paid and should he exported out of India for claiming the rebate. Here, the Respondent had not exported the actual goods covered under the invoices, but exported other goods of which they were not the owner of. This was revealed only when an investigation was carried on the records of the Respondent and the documentations found during the investigation revealed that they had not purchased any goods from the consignees mentioned on the export documents. It is apparently clear that for eligibility of rebate, the exporter has to export the exciseable goods which the Respondent had failed to do. They also could not correlate the goods purchased were actually exported. The GPIs/ Invoices did not match the consignments during the course of investigation. These factual evidences on record only revealed the malfide intentions of the Respondent.

(iii) In reference to Para 10 of the Order-in-Appeal, the purchases made from the market does not justify the correct correlation of the goods exported. The supervision done by the officers were on the basis of the goods produced before them during the course of cut pack process. The cut pack process, if carried out by the Respondent under a permission, was not carried out in the presence of the officers and even if the same was done in presence of the officers, the export which

was done at a later stage cannot justify the same have been exported. The ownership and the possession of the goods was with the Respondent and not with the department. So it is not evident from the submissions of the Respondent that the same goods were packed before the officer for export. This cannot be said as evidence that the goods cut packed were of the said consignees / persons whom the goods were purchased and exported by the Respondent. They had not adduced any documents to claims as stated by them.

(iv) Further the rebate claims earlier sanctioned were on the basis of the documents submitted before the adjudicating authority and were considered to be original, genuine and correct and true. The Adjudicating Authority totally relied on good faith of the Respondent. Later on investigation, it was revealed the malafide/false and fraudulent means adopted by the the Respondent to claim rebate. Had the documents withdrawn during the course of investigation placed before the adjudicating authority, the sanction of said rebate claims should not have resulted.

(v) The Notification No. 41/94-C.E. (NT) dated 22.9.1994 as amended, mentioned the conditions for the export of goods which the Respondent had fraudulently managed to export under false documents as discussed in aforesaid paras. They were given ample opportunities during the course of proceedings to prove the veracity of the documents and goods, but they regularly failed to justify the documents under which export was done by the Respondent on one pretext or the other. They also failed to voluntarily disclose the information to prove that the export were of genuine goods as mentioned and claimed in their export documents. It is seen that time to time they changed their stands and harped on the various aspects like they were not in position to correlate the documents with the goods exported, they have misplaced the documents, they had purchased the goods through brokers their such additional

justification failed to the prose the originality of the goods exported and the relevant documents.

(vi) The Circular No. 81/81/94-CX dated 25.11.94 defined the procedure for Export under claim of rebate under Rule 12(1), in Para 9.3, the documents to be filed for claiming rebate mentioned that the Disclaimer Certificate was mandatory to be filed for claiming the rebate.

(vii) It is apparently clear that it was mandatory for the exporter to file proper documents for claiming the rebate. The Respondent though had submitted documents before the authorities, but it was only after investigation and scrutiny of the documents, the revelation of their claim being false came to the force.

(viii) The Circular No. 176/10/96-CX dated 27.02.96 issued under F.No. 209/5/96-CX.6 mentions the clarification and direction for Exports of fabrics after cutting and packing under claims of rebate. In Para 5(d) states that evidence is produced that the goods were actually exported. As the Respondent failed to prove the actual export of the goods, the Para 10 states that *"Where the post facto enquiries/ investigations as directed above reveals that the goods exported were not duty paid goods, rebates if any sanctioned may be recovered as provided in law. Such recovery shall be without prejudice to any other action which can be taken under law where so warranted."*

(ix) All the nine claims pertains to the period from 1991 to 1994. The reliance placed by the Respondent on the Boards Circular No.176/10/96-CX dated 27.2.1996 does not merit application here as the said Circular cannot have retrospective effect.

(x) The Circular No. 203/37/96-CX dated 26.04.96 issued under F.No. 209/11/96-CX.6 for Central Excise procedures for exports. Relevance of FOB Value vis-a-vis Value declared on AR4 was not relevant to the instant case.

(xi) The Circular No. 428/61/98-CX dated 02.11.98 issued under 209/52/98-CX.6 for "Waiver of condition of direct Exports from the factory Premises- Relaxation regarding 'Disclaimer Certificate'

requested by M/s. ACCE Industries, Mumbai," does not merit application to the instant case. Firstly, the circular does not have any retrospective effect and secondly, the Respondent was not the manufacturer they were only a merchant exporter. Further as the circular demands for payment of duty of goods cleared for export, which the Respondent failingly could not produce, as their books of account did reflect any purchase from the consignee or any business transactions with persons named in the export documents.

(xii) The Commissioner (Appeals) had wrongly decided the matter in favour of the exporter Respondent by citing the above said circulars and orders in the case later to the occurrence of events i.e sanction of the rebate claims. There was sufficient documentary evidence found during the course of investigation regarding the fraudulent claims of the exporter so there was no question of presumption or assumption as claimed in the Order-in-Appeal.

(xiii) They had stated before the Revisionary Authority, that the entire exporter was under DEEC scheme, but they had not submitted any documents in this respect to justify their claim. Moreover, export under DEEC would merit the goods to be exported under bond and not on payment of duty. The claim regarding the goods were exported under DEEC scheme, the Respondent failed to produce documents relating to the said advance license so that the correlation of goods were exported could be established. They also failed to produce the documents in respect of cut pack permission and the supervision so carried out by the officer as claimed by them

(xiv) The Section 11A(1) is applicable in the instant case. It is axiomatic from the aforesaid discussion that the Respondent had regularly and miserably failed to prove genuineness of the goods with corresponding documents. They failed to prove the purchase of the goods from the related persons mention in their export documents. Thus it is apparently clear that fraudulent method had been adopted by the

Respondent for claiming the rebate claim therefore the extended period in the case will be applicable.

(xv) Further in respect to the instant case, the Applicant has relied on the following case laws:

(a) The decision of Apex Court in case of Telestar Travels P. Ltd., Vs Special Director of Enforcement [2013(02) LCX CX0005] in regards to evidence found during the course of investigation,

(b) The Hon'ble High Court of Gujarat at Ahmedabad [2011(09)LCX0306] in the case of Diwan Brothers Vs UOI in Special Civil Application No. 13931 of 2011, decided on 15.09.2011 and therein cases Quoted Commissioner v. D.P. Singh [2011 (270) ELT 0321 (Guj.)] Distinguished [Paras 7, 10] and Sheela Dyeing and Printing Mills Pvt. Ltd. v. Commissioner [2008(07)LCX 0342] Eq [2008 (232) ELT 0408(Guj.)]-Relied on [Para 12] held same view.

(c) The Government of India in Order No. 915-920/2011-CX dated 15.7.2011 in case of Jhawar International [2011(07)LCX 0261] held the similar view.

(xvi) The Commissioner (Appeals) had erred by setting aside the impugned Order-in-Originals passed by the Adjudicating Authority and excepting the contention of the Respondent in their appeal. Therefore, the same be set aside.

4. The Respondent filed cross-objection against the Revision Application on the following grounds:

(i) There are two Orders-in-Appeal Nos. BPS/102 &103/MI/2013, even there are two File Nos. 101/MI/2013 and 102/MI/2013 in the same order and one Revision Application has been filed against therese two order. Actually two revision application needs to be filed in this case. As per Section 35EE of Central Excise Act, 1944, Revision Application needs to be filed against each order of Commissioner(Appeals).

(ii) This is the Second round of Revision Application on the same issue. Earlier Revision Authority vide GOI Order No. 36-44/2000 dated 06.04.2000 remanded the case back for passing fresh orders with as per directions in the GOI Order. The Additional Commissioner, Central Excise, Mumbai-I vide Order in original No. 02/MI/2013-14/Addl dated 06.05.2013 passed Order-in-Original after 13 years of issue of GOI Order dated 06.04.2000. In this Order-in-Original, the adjudicating authority passed order without even following the direction of GOI order dated 06.04.2000 reconfirmed the demand, interest and imposed penalty. Against this, the Respondent filed appeal before Commissioner (Appeals). The Commissioner (Appeals) passed detailed Order-in-Appeal Nos. BPS/102 & 103 MI/2013 dated 12.10.2013 and set aside the Order-in-Original and allowed the Appeal of the Respondent. Against this Order in Appeal, the Department is in Revision Application for second time.

(iii) The Respondent rely on the Order-in-Appeal passed by the Commissioner (Appeals) and prays for upholding the Order-in-Appeal which was a proper and correct order and had discussed all the points raised in the Revision Application in detail in addition to that regarding documents they are with the Department, further held that the demand is barred by limitation. There is no grounds of revision on these issues. The Respondents submit that the Revisionary Authority may set aside the Revision Application of Department as the same is not tenable and uphold the Order-in-Appeal.

(iv) The interesting part is that the rebate was sanctioned in 1991, 1992, 1993, SCNs issued during 1996, 1997 and the demand was again confirmed in a routine manner in 2013 without following the directions of GOI. This Order-in-Original was passed after more than 20 years of the export and rebate claimed and 18 years after issue of SCN. The Order-in-Original refers and records are being asked for that years of export from the Respondent even though all these records are

with the Department themselves seized vide panchnama and documents filed for claiming the rebate. This is nothing but harassment. The GOI Order of remanding the case back to adjudicating authority was dated 06.04.2000 and adjudicated in vide impugned Order-in-Original in 2013 i.e. after 13 years. On this count alone the Revision Application needs to be rejected. The Respondents are innocent. Further all these records called for by the Department were seized under Panchnama in December, 1995 and are lying with the Department since then. These documents were not returned to the Respondents inspite of repeated requests. If the said document were returned to them they would have produced them before the Adjudicating authority. It is not possible for the Respondent to submit the said document unless Department give copies of these records/ documents. The Revision Application is solely on presumption and assumption. This issue had been held by the Commissioner (Appeals) properly and correctly. The Order-in-Appeal was proper and correct and needs to be upheld.

(v) The Respondent is a Merchant Exporter. The Respondent was exporter of fabrics and had filed rebate claims after exporting the duty paid textile fabrics purchased from the local market. The duty paid textiles exported was procured from the local market. The Textile was in the original mill packed condition as referred in the Central Excise Gate Pass/Invoice, in the same packed condition cleared from the manufacturer's premises on payment of appropriate duty. After purchase, before opening the packet, the Respondent had made application before the Jurisdictional Assistant Commissioner along with copies of all the local purchase Central Excise duty paid Gate Passes for verification. The procedure is that the Assistant Commission after satisfying with all the documents submitted by the Respondents allow permission for opening, cutting, repacking and export. After allowing such permission for export, the Assistant Commissioner deputes an officer for verification of packages whether

they are in the same mill packed condition cleared by the manufacturer. The officer after satisfying that the goods are in the same original packed condition allows the Respondent in his presence to open, cut and repack the fabrics as per requirement of the buyer. After opening, cutting and packing in the presence of Central Excise Officer, the necessary documents such as statement of export and AR4 for export had been prepared. Under the physical supervision of same officer who has supervised the opening, cutting and repacking, AR4 was prepared for exact quantity of textile repacked and to be cleared for export. The Officer along with the Superintendent also certified on the AR4, number of packages, exact quantity of goods cleared for export out of the total fabrics purchased as per the application submitted to the Assistant Commissioner for approval and exact amount of duty paid on goods exported and rebate can be claim by the Respondent. The Officer also certified the GPI Nos. and quantity exported in respect of each GP1, the textile was exported, total quantity exported and rebate entitled on the textile exported under the ARE4. This endorsement was required to calculate exact amount of rebate to be allowed on export to the Respondent. After this, the fabrics sealed by the Officer under the seal of the Department meant for export was directly taken to the port and exported under Customs Supervision. The Respondents submit their rebate claim after export as per Rule 12 of the Central Excise Rules,1944 along with all the documents as stipulated under Rule 12 and Notification issued therein issued under Rule 12. The Respondent had filed their rebate claims along with all the documents in original and the statement of export GPl wise issued by the Central Excise Officer who has physically supervised the opening, cutting, packing and allowed export under his physical supervision duly sealed by their seal. In short from the stage of receipt of fabrics in the premises of Respondent till the textile exported all the processes were done in the

presence of Central Excise Officer specially posted for the purpose and the Respondent had paid necessary MOT charges for the same.

(vi) After proper investigation and after satisfying himself the genuineness of physical export and duty paid character, the Maritime Commissioner (Rebate) had passed an order for sanction of rebate claim and paid the rebate sanctioned amount to the Respondent. The Respondent had followed the procedure as laid down in Trade Notice No. 66(MP)(UMO)/General/(12) 1975 dated 09.04.1975 issued by the Collector of Central Excise, Mumbai and Board's Circular No.2/75-CX.6 dated 22.11.1975 for cutting and packing and Export thereafter. However, the rebate sanction itself is the Order of Sanction. If the rebate was erroneously paid to the Respondent, then in such cases within the stipulated period as required, Department should have filed appeal against the rebate sanction order of the Assistant Commissioner for setting aside the rebate sanction order. These rebate sanction orders was not challenged by the Department at all and the rebate sanction orders had attained finality. The SCNs issued in all these cases were beyond the stipulated period that too filed without filing any appeal against the rebate sanction orders also without issuing protecting demand within the stipulated period. There was no allegation in the SCN that any of the documents submitted for claiming rebate was forged or wrong. All the original documents are lying with the Department which was submitted for claiming the rebate.

(vii) The only allegation against the Respondent is that of non submission of proper NOC. The NOC is not required to be submitted by the Merchant Exporter when the merchant exporter himself files the Rebate claim. In this case, the Respondent is a Merchant Exporter and rebates were claimed by them only. In this case if there would have been any mistake, Departmental officers would not have allowed the export under physical supervision at all. The Respondent had paid

necessary MOT charges for each export and MOT charges for physical supervision of opening, cutting, packing and export under AR4. The grounds taken by the Department that the officers did not see the goods or might have changed after their signature is the bald vague, irresponsible statement. If it is so, whether any investigation has been done in this regard or any action has been taken against the officers? If the Central Excise seal is intact the Customs authority would not have allowed the export. When the Officers are correct, how there can be mistake on the part of Respondents. This ground of Applicant is the irresponsible ground on the part of the Department. On this count alone the revision application needs to be set aside.

(viii) Demand is barred by limitation as no appeal has been filed against rebate sanction order and the impugned SCNs was issued after the stipulated period as per Section 11A of Central Excise Act, 1944.

(ix) No penalty can be imposed as the rebate sanctioned was proper and correct and also no appeal had been filed against the rebate sanction order. There was no allegation that that the documents submitted by the Respondent was not proper and correct except the NOC. This is because the fabrics were purchased through brokers and amount had been paid to broker's account, therefore the name of buyer will not show on the purchase register. The NOC was also obtained by the broker from the buyer. None of the NOCs were forged. Whole textile market is working on this analogy only. In this connection Circular No. 428/61/98-CX., dated 02.11.1998 Para 3 refers that no such NOC/Disclaimer is required when the exporter himself files the rebate claim under Rule 12 of Central Excise Rules,1944.

(x) No interest is payable as the issue is prior to coming into force of Section 11AB of Central Excise Act, 1944. In the Respondent's own case, GOI vide Order No. 281-312/202 dated 22.10.2002 set aside the Revision Application of the Department and upheld in favour of Respondent. The original authority did not refer Section 11AB in this

case because the GOI had passed order in their own case in respect of Order-in-Original passed for recovery of duty under Section 11AB. In this case of Respondent, also the Adjudicating Authority had passed the earlier Nine Orders-in-Original imposing recovery of interest under Section 11AB. In the impugned case, the Order-in-Original shows the recovery of interest @ appropriate rate on the receipt of rebate amount till date of repayment to the department under Central Excise Act, 1944 without mentioning Section 11AB. The clause of interest i.e. Section 11AB of Central Excise Act,1942 was inserted for the first time in the Statute from September,1996, prior to this there was no such clause of interest recovery in the Central Excise Statute. Hence, no interest was chargeable under any other Section as the interest clause was introduced in the Central Excise Act,1944 during September,1996 for the first time after export and after sanctioning the rebate.

(xi) The goods had been exported after taking necessary prior permission from the Assistant Commission, Central Excise, Division-A. All the goods exported was under physical supervision of Inspector of Central Excise officers and Superintendent of Central Excise duly sealed with Central Excise seal who were deputed by the Assistant Commissioner, Central Excise, Division-A. The duty paid goods was purchased in the home market through brokers in same factory packed condition, opened, cut and repacked for export in the presence of Inspector of Central Excise, and export undertaken under Inspector and Superintendent's supervision and they certified the quantity exported and proportionate rebate to be claimed on actual export of fabrics certified on the AR4 itself and Central Excise GP1-wise textile export, quantity etc. This statement was certified in respect of each GP1 quantity export. There is no allegation about the physical verification of officer, duty paid character on goods exported and its physical export. Necessary prior permission had been granted in respect of each GP1 by the Assistant Commissioner because all these purchases

of duty paid textiles were in order. When no documents was forged and the declaration/certification of officers was proper and correct, there should not be any allegation against the Respondent's claim of genuine rebate also. No action was also taken against the officers as they have done the proper and correct endorsement after physical verification. Hence the grounds in revision application was only a presumption and assumption without any corroborating evidence.

(xii) The issue is barred by limitation as no demand had been issued within the stipulated period against the rebate claim sanctioned and paid to the Respondent or till now. The said rebate sanctioned orders are SUPRA. No SCN is not valid unless the appeal is filed against the first Order of assessment/rebate sanction is challenged.

(xiii) All the Rebate claims were filed along with documents in original and all these documents are with the Department. All the particulars of documents submitted for claiming rebate had been enclosed to the SCNs as relying on documents. Now, how can the same authority, now can say that documents are not available. It is not justice.

(xiv) The documents referred in the Show Cause Notice and documents seized under punchnama with the Department itself prove that all the queries raised in the Revision Application are fulfilled. The AR4 No. is shown on the S.B. along with Packing slip, qty.. Marks and Carton Nos. Qty. exported. The AR4 shows the GP1 Nos., Carton Nos. Marks Nos. The AR4 number is mentioned on the Shipping Bill and Shipping Bill Number is shown on the AR4 with date of sailing the ship along with the impugned goods of AR4 and all these are duly endorsed by Customs Officers P.O. & A.O. The Bill of Lading, Mate Receipt also certifies the physical export of goods. All these can be tallied with the goods exported and cleared under each AR4.

(xv) During the same period this impugned case was booked against the Respondent, there was a mass raid on number of similar exporters

who were following the said same procedure of opening, cutting and packing following the procedure as laid under Trade Notice No.66/75 dated 09.04.1975 and Board's Circular of 1975. In one of the case GOI of India in its Order has referred the Investigation Report of C.B.I, the Apex Investigating agency in the identical issue and concluded that this is the "system Failure" and nobody is in fault. This is reported in the case of M/s. Seema Silks and Sarees and this is referred in the GOI order reported in — 2000 (121) E.L.T. 561 (0.0.1.). This case of Respondent, was also booked by mass raid along with M/s. Seema Silks and Sarees who was also following the Trade Notice No. 66(MP)(UM0)/General/(12) 1975 dated 09.04.1975 issued by the Collector of Central Excise, Mumbai and Board's Circular No.2/75-CX.6 dated 22.11.1975.

(xvi) All the below mentioned documents are with the Department and they were not returned to the Respondents so far:

(a) Documents filed along with the rebate claims for claiming rebate before Maritime Commissioner as referred in the SCNs.

(b) The documents withdrawn vide Annexure -'A', and 'B' to the Panchnama dated 08.12.1995. Vide Annexure-'A' – 1 to 212 documents/files pertaining to export/purchase/bank papers/bills were withdrawn. Vide Annexure-'B' - 1 to 71 documents/files were withdrawn. Vide Annexure-'C' - 1 to 66 documents/files were withdrawn.

(c) The application along with the copies of original GP1 submitted for opening, cutting and packing of duty paid textiles purchased from open market submitted before Assistant Commissioner, Division A.

(xvii) Further the Respondent relies on the following Board's Circulars:

(a) Circular No. 176/10/96-CX dated 27.02.1996.

(b) Circular No. 203/37/96-CX dated 26.04.1996.

(c)Circular No. 428/61/98-CX dated 01.11.1998.

(xviii) The Respondents rely on their own case which was pending at the time of raid and was not sanctioned. The said claim on the same papers was submitted at the time of filling and vide Order in Original No. is F. No. C(15)54/Reb-72 /GNI/95/18 dated 18.8.1999, the Assistant Commissioner (Refunds) C.Ex., Mumbai-I had passed the rebate claim.

(xix) In all, Nine Show Cause Notices was issued in this case:

Sr.No.	SCN No. & Date	Amount (Rs.)
1	V/PI/12-838/95 dt 09.07.96	13,886.80
2	V/PI/12-838/95 dt 09.08.96	33,549.00
3	V/PI/12-838/TF-V/95 dt 09.08.96	36,995.00
4	V/PI/12-838/TF-V/95 dt 22.08.96	19,101.00
5	V/PI/12-838/95 dt 30.08.96	13,024.50
6	V/PI/12-838/95 dt 11.09.96	8,954.00
7	V/PI/12-838/TF-V/95 dt 07.11.96	11,533.50
8	V/PI/12-838/TF-V/95 dt 29.01.97	19,92,999.16
9	V/PI/12-838/TF-V/95 dt 18.03.97	2,32.861.00
	Total	23,62,903.96

In all the above cases, the rebate was sanctioned in 1991,1992, 1993 and 1994, however, the SCNs were issued in 1996 and 1997. There was no suppression in this case. In all these cases, prior permission for cutting packing and export were taken, the process was undertaken in the presence of Central Excise Officer. All the purchases were through Brokers and all payments were also made to Broker's account. Therefore, the purchase books showed the name of broker and not the buyer. All the payments were made by 'Payee's Account' Cheque only. The NOC was obtained by the broker from the buyer. The NOCs were not forged one and were genuine. The buyer may not be knowing the Respondent personally, but the broker knows them personally. The NOC was not required to be submitted by the Merchant Exporter as it was clarified vide Circular No. 428/61/98-CX

dated 01.11.1998. Hence the whole demand was barred by limitation as is held by the Hon'ble Supreme Court.

(xx) It is the fact that in the textile industry, the fabrics are purchased through the Brokers. The amount was also paid to the broker. NOC was also taken by the broker and handed over to Respondent. Hence the name of the broker was shown on the Journal and register. The manufacturer or buyer of fabrics may not know the name of Respondents as they deal with only through brokers. Further the Central Excise Invoice and fabrics purchased are tallied by the Central Excise Officer deputed for inspection. He had not raised any objection. The grounds taken in revision application is only a presumption and assumption without any corroborative evidence.

(xxi) The purchase of fabrics were through the brokers. The Summons issued shows that *"if you to say that you have not sold. Please say so no further action will be taken"* It is the human tendency to come out free in all the problems without any hassle. The Summons gave them tonic for the same. All the people has to save themselves said that they have not sold. But, all the NOCs were genuine. Further NOC is not required to be submitted when the merchant exporter himself claim the rebate. In this, they rely on the Circular No. 428/61/98-CX dated 01.11.1998.

(xxii) Further all the purchase, opening, export cutting and packing were undertaken in the presence of Central Excise Officer deputed by the Assistant Commissioner, C,.Ex. Division-A. In that case, if any document or fabrics not taken, whether any action was taken against the officer ? If not, how come only the Respondent was wrong ? Hence the export was proper and correct.

(xxiii) No penalty is impossible in this case because there was no suppression. First of all, rebates were sanctioned and no action has been taken against the rebate sanction order. That has become

SUPRA. Further the export was under physical supervision of Central Excise Officers by taking prior permission for opening, cutting and packing from the Assistant Commissioner, Central Excise, Division-A, Mumbai-I. There is no allegation against inspection, export under the physical supervision after paying necessary MOT charges, export documents submitted such as AR4, Shipping Bill, Bill of Lading, Mate Receipt, Export Invoice and packing slip and Duplicate copy of the duty paid Central Excise Invoice issued under Rule 11. Hence, the allegation was under presumption and assumption, hence no penalty is imposable, which is not sustainable and penalty imposed is wrong. Further whole demand was barred by limitation as no appeal had been filed against the Rebate sanction order at all and the Rebate sanction order attained finality. In this respect, they rely on the Hon'ble Supreme Court judgment in the case of Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) [2004(172) E.L.T.145 (S.C.)].

(xxiv) The Respondent had scrupulously followed the Circular No. 172/10/96- CX, dated 27.02.96. If they had not followed the condition, the Assistant Commissioner, Central Excise Division-A would not have given the permission for opening, cutting & packing for export and Inspector would not have inspected the fabrics, cutting and packing and allowed the physical export. The export was proper and correct. M/s. Seems Silk & Sarees was also following the same procedure which the Respondent was following. If the officers had derelicted in their duties, department should have taken action against them also. No action has been taken against them. This itself is the proof that the Respondent is innocent and being punished for none of their fault. When the Central Bureau of Investigation in its report itself has said that there is 'system failure' how only the Respondent is responsible in this case as they have not done anything wrong.

(xxv) The summons itself was issued faulty, hence the reply was received faulty. All the NOCs were received through their brokers as the textiles were purchased through them. Amount was also paid to the broker as the system in textile trade is that all the dealing are done through brokers. Hence the name of the buyer does not reflect in the journal and purchase register. All the textiles received in their godown were first verified by the officer whether it is in factory packed condition along with the duty paid Central Excise Invoice of the manufacturer, then only he allows the cutting and packing for export.

(xxvi) The grounds in the revision application itself is not tenable as no fraud/forgery had been found by the Department. Department did not produce any corroboration evident on which they can rely on the allegation. Except NOC, no other allegation was there against the Respondent. NOC denial is because of wrong wording in the Summons. However, nobody has denied the NOC issued. Further, NOC is not required to be submitted by the exporter if the rebate is claimed by merchant exporter himself. The allegation is only a presumption and assumption. The Assistant Commissioner, central Excise, Division-A allowed the permission, Inspector inspected the goods in its original packing condition, then supervised the cutting and packing allowed the physical export. Foreign remittances received. Rebate has been sanctioned verifying all export documents. When all the documents are proper and correct then only rebate had been sanctioned. It is properly held by the Commissioner (Appeals) in the impugned Order in Appeal.

(xxviii)The Respondents relies on following judgments/Orders:

(a) Collector of C.Ex. vs. Chemphar Drugs & Liniments [1989(4) E.L.T. 276(SC)] - Department if had full knowledge then extended period not invokable.

(b) Collector of C.Ex., vs. Malleable Iron & Steel Castings Co. (P) Ltd. [1998(100) E.L.T. 8 (S.C.)] - Demand-Limitation - Suppression of facto not allegable when Department was all along aware.

(c) Tamilnadu Housing Board vs. Collector of C.Ex., Madras [1994(74) E.L.T. ((SC)]- Demand - Limitation for extended period invokable only when - Suppression, fraud, collusion etc. needs to be proved.

(d) Padmini Products vs. Collector of C.Ex.,[1989 (43) ELT 195 (S.C.)] - Demand - limitation -Extended period of 5 years inapplicable - Scope of fraud, collusion, wilful mis-statement or suppression of facts or contravention of rules with intent to evade duty.

(e) Cosmic Dye Chemical vs. Collector of C.Ex., Bombay [1995(75) ELT 721 (S.C.)] - Demand - Limitation - Intent to evade duty must be proved.

(xxix) The Judgments/Orders referred in revision application are not applicable to the current case hence no comments are made against this orders/judgments.

(xxx) There was no suppression, mis-statement, fraud in this case. Right from receipt of fabrics in their premises till the export, were under the knowledge of Assistant Commissioner as the Respondent had made application for opening, cutting and packing then export. The opening cutting, packing and export were under the physical of Central Excise Officers deputed specifically for this purpose. Permission for opening, cutting and packing is allowed by the Assistant Commissioner. The opening, cutting, Packing & Export were undertaken in the present of Inspector and Superintendent of Central Excise and further by Customs Authorities by signing the AR4 and shipping Bill, Export Invoice and packing slip. After verifying all these documents in original the Maritime Commissioner sanctioned the rebate claim. There was no allegation against the documents, duty paid character,

physical export. Hence the revision application needs to dismissed in limine.

(xxxi) The Respondent prayed that all the records, files and documents relevant in the case be called for, considered and the said Revision Application filed by the Department may be set aside. And the Order-in-Appeal passed by the Commissioner (Appeals), Mumbai-I, Central Excise be upheld.

4. Personal hearing in the case was fixed for 16.01.2020 and 22.02.2020. On 22.02.2020, Shri R.V Shetty, Shri S.R. Shetty both Advocate and Shri Dharmendra Pal, Export Manager, all appeared on behalf of the Respondent and no one appeared on behalf of the Applicant. They submitted that this is the 2nd round of litigation and filed cross submissions was filed. They submitted that other cases have been closed and they relied upon the case laws in Seema Silks & Sarees [2000 (121) ELT 561 (GOI)]. However, there was a change in Revisionary Authority, hence hearing in the matter was fixed for 01.12.2020, 04.12.2020, 09.12.2020 and 29.01.2021. No one appeared on behalf of the Applicant. On 29.01.2021 Shri R.V. Shetty, Advocate appeared online on behalf of the Respondent. He submitted that rebate was sanctioned in 1991 and they were issued 09 Show Cause Notices in 1996-97. These show cause notices were confirmed in 1998 and their appeal was rejected in 1999. In Revision Application, the Joint Secretary, Revisionary Authority remanded the matter. The Commissioner(Appeals) had allowed the rebate and the Applicant Department has filed instant Revision Applicant. He requested that the Order-in-Appeal passed by the Commissioner (Appeals) be maintained.

5. 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.

6. On perusal of the records, Government observes that the Respondent, Merchant Exporter are engaged in export of duty paid fabrics and the duty

paid thereof were being claimed by them as rebate. In the current case, the Respondent was sanctioned rebate in during the period from 1991 to 1994. Thereafter, on the basis of intelligence, that the goods exported by them were not the same goods as mentioned in the duty paying documents on which rebate of duty were sought by the Respondent, the rebate claims allowed were re-examined. Investigations conducted in this regard revealed that the Appellants had allegedly contravened the provisions of Rule 12 (1) of the Central Excise Rules, 1944 read with Notification No. 197/62-CE dated 17.11.1962, 41/94 dated 22.09.1994 and Trade Notice No, 66 (MP) (UMP)/General/(12)/1975 dated 09.04.1975. The Respondent was issued 09 Show Cause Notices for Rs. 23,62,903.96/- and the matter was agitated further before the Revisionary Authority, who vide GOI No. 36-44/2000 dated 06.04.2000 remanded the matters back to the original authority for proper scrutiny of the documents and for raising demands wherever discrepancy had been found in accordance to law. In the remand proceedings, the Additional Commissioner, Central Excise, Mumbai-I vide Order-in-Original No. 02/M-I/2013-14/Addl dated 06.05.2013 again confirmed the demand of duty of Rs. 23,62,503.96/- under proviso to Section 11A (2) of the Central Excise Act, 1944 along with interest and imposed a penalty of Rs. 23,62,000/- on the Respondent and Shri Thakur N Mulani, Proprietor of Respondent under Rule 209 A of the Central Excise Rules, 1944.

7. Government finds that the goods had been exported after taking necessary prior permission from the Assistant Commission, Central Excise, Division-A. All the goods exported was under physical supervision of Inspector of Central Excise officers and Superintendent of Central Excise duly sealed with Central Excise seal who were deputed by the Assistant Commissioner, Central Excise, Division-A. The duty paid goods was purchased in the home market through brokers in same factory packed condition, opened, cut and repacked for export in the presence of Inspector of Central Excise, and export undertaken under Inspector and

Superintendent's supervision and they certified the quantity exported and proportionate rebate to be claimed on actual export of fabrics certified on the AR4 itself and Central Excise GP1-wise textile export, quantity etc. This statement was certified in respect of each GP1 quantity export. There is no allegation about the physical verification of officer, duty paid character on goods exported and its physical export. Necessary prior permission had been granted in respect of each GP1 by the Assistant Commissioner because all these purchases of duty paid textiles were in order. When no documents were forged and the declaration/certification of officers was proper and correct, there should not be any allegation against the Respondent's claim of rebate also. Here Government is also in agreement with the finding of the Commissioner (Appeals) that "

> *"Furthermore, it is not open to the department to challenge that the goods so opened, cut and repacked were not those goods which were covered by the duty paying documents produced, unless and until conclusive evidence was produced by the department. More so when the goods are not physically available for the reason of having been exported and also for the reason that such duty paid goods had been opened, cut and repacked under proper permission from the prescribed authorities and also under the physical supervision of the Central Excise Officers."*

8. Government observes that the Applicant Department has submitted that *"The reliance place by M/s GNI on the Boards Circular No.176/10/96-CX dated 27.2.1996 does not merit application here. The said Circular cannot have retrospective effect. All the nine claims pertains to the period from 1991 to 1994."* The relevant portion of the CBEC's Circular No. 176/10/96-CX dated 27.2.1996 is reproduced below:

> *"5. With a view to obviate the difficulties, it has been decided by the Board that rebate claim prior to 17-10-1995 should not be rejected merely on technical grounds in such case where –*
>
> *(a) the goods were subjected to cutting and re-packing with specific/general permission of Assistant Commissioner;*
>
> *(b) cutting and re-packing was done under Central Excise supervision after establishing the identity of goods with duty paying documents;*

(c) other substantial requirements of existing procedures were substantially complied with case of any departure from the strict procedure, veracity of the export, identity of the goods, duty paid nature of the goods, etc. can be established making reference to the Central Excise Officer of the factory of origin and /or the Customs Officer and the port of export, as the case may be, or by issuing any query memo to the exporter wherever necessary to explain any apparent discrepancy;

(d) evidence is produce that the goods are actually exported;

(e) any evidence of miscues of such permission, or discrepancies in respect of value, quantity description etc. are not noticed.

6. For the period after the aforesaid date, detailed instruction have already been issued vide Circular No. 155/66/95-CX dated 17-10-1995. "

Government finds that the said Circular clearly states *"it has been decided by the Board that rebate claim prior to 17-10-1995 should not be rejected merely on technical grounds"* and the current case pertains to the period from 1991 to 1994 which is very much prior to 17.10.1995. Hence Government is in agreement with the finding of the Commissioner(Appeals) that merely on the ground of suspicion rebate claims already sanctioned in the past cannot be ordered for recovery from the Respondent.

9. Government observes that the Applicant Department has submitted that *"The Circular No. 81/81/94-CX dated 25.11.94 defined the procedure for Export under claim of rebate under Rule 12(1), in Para 9.3, the documents to be filed for claiming rebate mentioned that the Disclaimer Certificate was mandatory to be filed for claiming the rebate."* On this the Respondent submitted that *"There is no allegation that that the documents submitted by the Respondent are not proper and correct except the NOC. This is because the fabrics were purchased through brokers and amount had been paid to broker's account, therefore the name of buyer will not show on the purchase register. The NOC is also obtained by the broker from the buyer. None of the NOCs were forged. Whole textile market is working on this analogy only. In this connection Circular No. 428/61/98-CX., dated 02.11.1998 Para 3 refers that no such NOC/Disclaimer is required when the exporter himself files the rebate claim under Rule 12 of Central Excise Rules, 1944."*

10. Government finds that the Disclaimer Certificate would be necessary where exports are effected directly from the factory of manufacture or any other premises of the manufacturer of export goods. In the current case, the Respondent exporter of fabrics and had filed rebate claims after exporting the duty paid textile fabrics purchased from the local market. The textile was in the original mill packed condition as referred in the Central Excise Gate Pass/Invoice, in the same packed condition cleared from the manufacturer's premises on payment of appropriate duty. After purchase, before opening the packet, the Respondent had made application before the Jurisdictional Assistant Commissioner along with copies of all the local purchase Central Excise duty paid Gate Passes for verification. The procedure is that the Assistant Commission after satisfying with all the documents submitted by the Respondents allow permission for opening, cutting, repacking and export. After allowing such permission for export, the Assistant Commissioner deputes an officer for verification of packages whether they are in the same mill packed condition cleared by the manufacturer. The officer after satisfying that the goods are in the same original packed condition allows the Respondent in his presence to open, cut and repack the fabrics as per requirement of the buyer. After opening, cutting and packing in the presence of Central Excise Officer, the necessary documents such as statement of export and AR4 for export had been prepared. Under the physical supervision of same officer who has supervised the opening, cutting and repacking, AR4 was prepared for exact quantity of textile repacked and to be cleared for export. The Officer along with the Superintendent also certified on the AR4, number of packages, exact quantity of goods cleared for export out of the total fabrics purchased as per the application submitted to the Assistant Commissioner for approval and exact amount of duty paid on goods exported and rebate can be claim by the Respondent. The Officer also certified the GPI Nos. and quantity exported in respect of each GP1, the textile was exported, total quantity exported and rebate entitled on the textile exported under the ARE4. After this, the fabrics was sealed by the Officer under the seal of the Department meant for export

was directly taken to the port and exported under Customs supervision. Hence the exports which were not affected from the factory of manufacture or any other premises of the manufacturer of export goods, Disclaimer Certificate would not be required to be filed by the exporter Respondent. Further, the Respondent had obtained NOC from their broker since the goods had been purchased from brokers, payment had been made to such brokers and hence only the name of the brokers and relevant details of payment to such brokers would appear in the book dos account of the Respondent. Government finds that in absence of material evidence adduced by the department, no case of fraudulent claim of rebate has been made out by the Department against the Respondent

11. Government finds that current case pertains to the period from 1991 to 1994 and all the relevant documents where submitted by the Respondent along with rebate claims before the rebate sanctioning authority. The investigation carried out after the sanction of the rebate claim have also resulted in withdrawal of all concerned documents from the custody of the Respondent. Hence to insist for these documents to prove the claim of the Respondent after a lapse of more than 30 years would be unreasonable. The documents referred in the Show Cause Notice and documents seized under punchnama with the Department itself prove that all the documents are available with the Department and the same were not returned to the Respondent so far. If the Department entertained any doubts about the veracity of the rebate claims, it was open for the Department to verify the rebate claims and the supporting documents filed along with it. Without undertaking any such verification, the allegation of fraudulent claim of rebate leveled against the Respondent can neither be substantiated nor can the rebate amount so paid demanded back. Government is in agreement with the finding of the Commissioner(Appeals) that it is a settled legal proposition that suspicion, however strong cannot take place of evidence.

12. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. BPS/102 & 103/M-I/2013 dated 12.10.2013 passed

by the Commissioner(Appeals), Central Excise, Mumbai Zone-I and, therefore, upholds the same and dismisses the Revision Application filed by the Department being devoid of merits.

Shrawan 30/06/21

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

ORDER No. 237/2021-CX (WZ)/ASRA/Mumbai dated 30.6.2021

To,
The Commissioner of CGST,
13th Floor, Air India Bldg,
Nariman Point,
Mumbai 400 021

Copy to:

1. M/s G.N. International, 154, Ashoka Shopping Centre, 2nd floor, G.T. Complex, Mumbai 400 001.
2. Shri R.V. Shetty, Advocate, Flat No 101, 1st floor, E-Wing, Sterling Court, Marol, MIDC, Orkay Mill Lane, Next to Maheshwari Nagar, Andheri (E), Mumbai 400 093.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.