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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. 195/305/14-RA

Date of Issue: 09.07.2021

ORDER NO. 241 /2021-CX (WZ) /ASRA/MUMBAI DATED 08.07.2021 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s Elecon Engineer Co. Ltd.

Respondent : Commissioner, Central Excise, Raigad.

Subject : Corrigendum to Order No. 186/2021-CX(WZ)/ASRA/MUMBAI dated 29.04.2021 in respect of Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against Order-in-Appeal No. US/903/RGD/2012-13 dated 14.12.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

CORRIGENDUM

1. In Order No. 186/2021-CX(WZ)/ASRA/MUMBAI dated 29.04.2021

Copy of the order addressed to on page 9 appearing as

“1. The Commissioner, Central Excise, (Appeals) Raigad.”

Is replaced by

“1. The Commissioner of CGST, Belapur Commissionerate, CGO Complex, Sector No. 10, CBD Belapur, Navi Mumbai – 400 614.”

Shrawan
8/7/21
(SHRAWAN KUMAR)

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

ORDER No. 241/2021-CX (WZ)/ASRA/Mumbai Dated 08.07.2021

To,

M/s Elecon Engineer Co. Ltd.,
Anand Sojitra Road,
Vallabh Vidyanagar,
Dist. Anand- 388 120

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, CGO Complex, Sector No. 10, CBD Belapur, Navi Mumbai – 400 614.
2. Shri Trivedi & Gupta, Advocate, G-1, Janak Apartment, 9, Sevak Nagar, B/H, Gautamnagar, Race Course Circle, Vadodara-390 007.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

F.No. 195/524/13-RA

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. 195/524/13-RA/१५२१

Date of Issue: ०९.०८.२०२१

ORDER NO. २४०/2021-CX (WZ) /ASRA/MUMBAI DATED ०७.०७.२०२१ 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 CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

Applicant : M/s Bindal Exports Pvt Ltd., Surat.
(Formerly known as M/s J.B. Exports.)

Respondent : Commissioner of Central Excise, Raigad.

ORDER

This Revision Application has been filed by the M/s Bindal Exports Pvt Ltd. (Formerly known as M/s J.B. Exports.), 270 Bindal House, Kadodara Road, Kumbharia, Surat-394 230 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

2. The brief facts of the case are that the Applicant is a manufacturer/merchant exporter, had exported goods and had filed eighty rebate claims total amounting to Rs. 93,18,746/-under Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-CE(NT) dated 06.09.2004. The rebate claims were scrutinized and a Deficiency Memo Cum Show Cause Notice Cum Call dated 09.02.2012 was issued to the Applicant. The rebate sanctioning authority Deputy Commissioner, Central Excise (Rebate), Raigad Commissionerate vide Order-in-Original No. 2479/11-12/DC(Rebate)/Raigad dated 15.03.2012 rejected the entire rebate on the following grounds:

- (i) 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
- (ii) 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 were given opportunity for submission of documents/ records but none were produced. Hence

duty paid by processors out of accumulated Cenvat credit is not free from doubt.

- (iii) The manufactures of the goods, had 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 of Central Excise Act, 1944;
- (iv) Declaration of Self-sealing not given on the face of the ARE-1;
- (v) Found disparities amongst the various export documents i.e. Shipping Bills/Bill of Lading/Mate certificates, the shipment of goods in question cannot be confirmed.
- (vi) Chapter sub-head of goods in invoices do not tally with that in shipping bills;
- (vii) They have not submitted duty payment certificates from the concerned jurisdictional authority;
- (viii) The Applicant had lodged the claim with Rebate sanctioning authority to whom the rebate claim filed is not addressed to;
- (ix) The details of goods in ARE-1 and Shipping Bills do no tally creating doubt about the authenticity of the exact quantity of goods exported;
- (x) Bank realization certificate not furnished.

Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-III. The Commissioner(Appeals) vide Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 rejected their appeal.

3. Aggrieved, the Applicant filed has filed the instant Revision Application mainly on the following grounds:-

- (i) The Show Cause Notice is ab initio void, without jurisdiction and authority and also vitiated on account of limitation prescribed under the statute.
- (ii) Some of the disparities/deficiencies may have been present in some of the rebate claim and some other disparities/ deficiencies may have been present in other rebate claims and therefore the findings of the both lower authorities should be specific to particular rebate claim and that they have no authority to generalize their findings for all the rebate claims
- (iii) Since there is no dispute or doubt about the manufacture and exportation of the goods by the Applicant on payment of duty and as these two fundamental requirements are satisfied for the availment of rebate, they should have been granted rebate.
- (iv) The lower authorities had erred in rejecting the rebate claims on the ground that the Applicant had availed Cenvat credit on the invoices issued by bogus/fake/non existing unit and that several demand notices were issued to them in this connection which were confirmed by the respective authorities. The present status of the proceeding emanating from the demand notices relied upon are mentioned as under:

Sr. no.	SCN No. & dt	Order-in-Original No. & date	OIA No & date	CESTAT Order & date	Remark
1	V(Ch.54/3-02/Dem/2008 dt 4.12.08	32/ADJ/JC-VKS/OA/06-07 dt 12.2.07 passed by the Jt.Commr., CE., Surat-I		A/336-346/WZB/AHD/2011, S/91-99/WZB/AHD/11 dt 25.2.11 Matter remanded to the original authority for fresh decision	Matter pending with Adjudicating authority for fresh decision
2	V(Ch.54/3-	30/Dem/2009 dt	RKA/107/SRT	A/376/WZB/AH	Matter

	11/Dem/2005 dt 14.12.06	30.11.09 passed by the Commr. of C.Rc., Surat-I	-1/2010 dt 16.2.10 passed by the Commr(A) of C.Ex., Surat-I	D/2011, S/134/WZB/AH D/11, M/558/WZB/AH D/2011 dt 1.3.13 Matter remanded to the original authority for fresh decision	pending with Adjudicating authority for fresh decision
3	V(Ch.54/15- 28/D/ADC/09- 10 dt 16.10.2000	14/ADJ/ADC- BA/D/10-11 dt 29.11.10 passed by ADC, CE, Surat-I	RKA/99-100- 101/SRT- 1/2011 dt 11.3.11 passed by the Commr(A) of C.Ex., Surat-I	A/1316/WZB/A HD/2011, M/1313/WZB/A HD/11 dt 27.7.11 Matter remanded to the original authority for fresh decision	Matter pending with Adjudicating authority for fresh decision
4	V(Ch.54/15-2- /D/JC/08-09 dt 1.8.2008	07/ADJ/ADC- VKS/OA/09-10 dt 30.9.09 passed by ADC, CE, Surat-I	RKA/478- 479/SRT- 1/2010 dt 25.8.10 passed by the Commr(A) of C.Ex., Surat-I	A/768- 770/WZB/AHD/ 2011, S/703- 705/WZB/AHD/ 11 M/913- 915/WZB/AHD/ 11 dt 10.5.11 Matter remanded to the original authority for fresh decision	Matter pending with Adjudicating authority for fresh decision

Pursuant to passing of orders by the Tribunal, no fresh orders had been passed by the concerned adjudicating authority and the matters are still pending. This implies that all the instances of demand notices relied upon by the lower authorities had again come to the stage of adjudicating and unless final orders are passed, the instances which merely contain proposals cannot be used against the Applicant.

- (v) The Applicant had vide their various letters all dated 24.04.2006, had given proper clarification for each and every query raised by the department and had also submitted documentary evidences whenever

required however the lower authorities had totally ignored their letters dated 24.04.2006.

- (vi) The alleged discrepancies/ disparities point out are procedural infraction of Notifications/Circulars, etc. It is settled legal position that the procedural infraction of Notifications/Circulars, etc are to be condones if exports have been really taken place and that in such cases the substantive benefit of rebate cannot be denied for procedural lapses. In this the Applicant relied on few case laws.
- (vii) The Applicant prayed that the impugned order be set aside with consequential relief.

4. A personal hearing in the case was held on 08.01.2020 and Shri R.K. Sharma, Advocate appeared on behalf of the Applicant. The Applicant submitted that the goods were exported and BRC have been received. The Supdt had verified the duty and every reply was made regarding the discrepancies. The Applicant submitted written submission. However, there was a change in the Revisionary Authority, hence hearing were granted on 01.12.2020, 04.12.2020, 09.12.2020 and 19.03.2021. None appeared for the hearing. Hence the case is taken up for decision based on records on merits

5. The Applicant submitted their written submission on the following grounds:

- (i) The grounds taken by the Original Authority in Para 8 of the Order-in-Original

"8.I observe that the goods cleared by them are either processed fabrics or textile made ups. In this connection my attention is drawn to the notification No. 30/3004-CE dt. 09.07.2004 on, going through the said notification, I observe that the goods cleared by the above manufacturers are covered under the aforesaid notification where the goods are exempt from the whole of the duty of excise liveable thereon under the Central

Excise Act, 1944. Consequently, the manufacturers ought not have to cleared the goods on payment of duty. Thus since the payment of duty on the goods exported was not warranted, it naturally follows that he claims for rebate filled by the claimant cannot be sanctioned."

The Applicant submitted that CBEC Circular No. 795/28/2004-CX dated 28.07.2004 clarify about simultaneous availment of two notifications Nos. 29/2004-CE and 30/2004-CE both dated 09.07.2004. The Applicant being textile manufacturer use common inputs, which are used in continuous manner, as such it was practically impossible to maintain separate accounts. So, as advised in the CBEC Circular No. 846/03/2006-CX dated 01.02.2007 they had taken proportionate input credit in the manufacture of finished goods cleared by them on payment of duty, in order to simultaneously use both the notifications Nos. 29/2004-CE and 30/2004-CE.

- (ii) There was no dispute as to final products being exported by the Applicant paying applicable duty under Notification No. 29/2004-CE. The jurisdictional Range Superintendent had properly verified and report the fact to the rebate sanctioning authority. This fact was also clearly declared on each and every excise invoice
- (iv) The declaration on some ARE-1s were mistaken, instead of striking out 'without availing CENVAT facility under CENVAT Credit Rules, 2004' part, their clerical staff stoke out the 'availing' part, before the division line between both the parts in Sr. No. 3(a) of the ARE-1 form. The Applicant regret the mistakes and assures that no such mistake will occur in future.
- (v) When the Applicant had cleared the final products as per law without any violation, how the legitimate rebate claims were disallowed remain as un-understood.

(vi) The concerned Deficiency Memo cum SCN Personal Hearing notice was ab initio void, without jurisdiction and authority and also vitiated on account of limitation prescribed under the statute. The Applicant placed reliance in few case laws

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. On perusal of the records, Government observes that the Applicant, manufacturer/ merchant exporter had exported goods and had filed eighty rebate claims total amounting to Rs. 93,18,746/-under Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-CE(NT) dated 06.09.2004. The rebate claims were scrutinized and a Deficiency Memo Cum Show Cause Notice Cum Call dated 09.02.2012 was issued to the Applicant. The rebate sanctioning authority Deputy Commissioner, Central Excise (Rebate), Raigad Commissionerate vide Order-in-Original No. 2479/11-12/DC(Rebate)/Raigad dated 15.03.2012 rejected the entire rebate on the grounds as detailed in Para 2 above.

8. The main reason for rejection was that the Applicant had availed Cenvat credit on invoices issued by bogus/fake/non-existing units. Government observes that the Applicant was issued Deficiency Memo-Cum Show Cause Notice dated 09.02.2012, wherein they were requested to furnish the relevant documentary evidence/certification regarding payment of Central Excise duty on the export goods and payment of Central Excise duty at input stage (on grey fabrics) used in the manufacture of the export goods covered in the ARE-1s and also genuineness of the Cenvat credit/deemed credit availed in respect of the inputs (grey fabrics). The Applicant submitted that the present status of the proceeding emanating from the demand notices details shown at Para 3(iv)

above, pursuant to passing of orders by the Tribunal, no fresh orders had been passed by the concerned adjudicating authority and the matters are still pending. This implies that all the instances of demand notices relied upon by the lower authorities had again come to the stage of adjudication and unless final orders are passed, the instances which merely contain proposals cannot be used against the Applicant. Government notes the Applicant had availed Cenvat credit on the strength of invoices of the firms that did not exist at the declared premises or these firms had availed Cenvat credit on the basis of invoices issued by the fake/non-existent/bogus/fictitious firms, hence the Applicant was issued demand notices shown at Para 3(iv) above. Government finds that in the current case, the Applicant has not submitted any documents issued to processors for processing and then the processors should have returned the processed fabrics to deemed manufacturers. Since the suppliers of grey fabrics did not exist, the transactions shown regarding supply of grey fabrics on central excise invoices, are fraudulent and bogus to wrongly avail the Cenvat credit and irregular/fraudulent availment of rebate claims.

9. Government finds that the Applicant's name figure in the Alert Circular of the Department and investigation revealed a large scale scam wherein fraudulent Cenvat credit was availed without receipt of inputs i.e. grey fabrics against fake invoice and the same was utilized for payment of duty on the clearance of export under claim of rebate and was also issued demand notices. Hence the Applicant should have provided evidence to the effect that the duty paid on exports were out of genuine Cenvat credit which they have failed to do so. 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 judgment has been upheld by the Hon'ble High Court of Gujarat. In a judgment 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."

10. 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."

11. 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 there from*" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

12. Government observes that the other reasons for rejection of 80 rebate claims were on the following grounds :

- (i) Declaration of Self-sealing not given on the face of the ARE-1;
- (ii) Found disparities amongst the various export documents i.e. Shipping Bills/Bill of Lading/Mate certificates, the shipment of goods in question cannot be confirmed.
- (iii) Chapter sub-head of goods in invoices do not tally with that in shipping bills;
- (iv) They have not submitted duty payment certificates from the concerned jurisdictional authority;
- (v) The Applicant had lodged the claim with Rebate sanctioning authority to whom the rebate claim filed is not addressed to;
- (vi) The details of goods in ARE-1 and Shipping Bills do not tally creating doubt about the authenticity of the exact quantity of goods exported;
- (vii) Bank realization certificate not furnished.

13.1 The Applicant had filed 80 claims total amounting to Rs. 93,18,746/- and in their revision application has submitted only 05 ARE-1s as specimen documents for proof. The details are given below:

Sr. No.	RC No & dt	Amt (Rs.)	ARE-1 & dt	Invoice No. & dt	S/B No & dt	B/L No. & dt
1	18742 dt 5.8.05	95164	82/05-06 dt 13.6.05	73 dt 11.6.05	3533564 dt 16.6.05	BOMALX/MSF/0506/00017 dt 23.7.05
2	-	137773	42/05-06 dt 9.5.05	24 dt 7.5.05	3455531 dt 7.5.05	ISA/NSV/DXB/644641 dt 17.5.05
3	-	136120	43/05-06 dt 9.5.05	27 & 28 dt 8.5.05	3455533 dt 7.5.05	ISA/NSV/DXB/644641 dt 17.5.05
4	-	135408	41/05-06 dt 9.5.05	25 dt 7.5.05	3455536 dt 7.5.05	ISA/NSV/DXB/644641 dt 17.5.05
5	-	34764	94/05-06 dt 24.6.05	96 dt 23.6.05	3554552 dt 25.6.05	ISANSVDXB646836 dt 2.7.05

13.2 Government observes that

(a) In r/o Sr.No. 2 to 5, the ARE-1s does not pertains to the list of R.C Nos & date given in Para 1 of the Order-in-Original dated 15.03.2012.

(b) In r/o Sr.No. 1 i.e. RC No. 18742 dated 05.08.2005, ARE-1 No. 82/05-06 dt 13.6.05 the SCN states :

"3. RC No. 18742 dated 05.08.05

(i) No Container No. and Seal No. mentioned in the Bill of Lading.

(ii) ARE-1 number mentioned on Shipping Bill is different from the ARE-1 submitted with the claim.

(iii) It is indicated in the Excise Invoice that goods falling under Chapter Heading 5406 of the Central Excise Tariff were cleared for export but in the corresponding Shipping Bill it is declared that goods falling under Chapter Sub Heading No. 54071039 were exported."

13.3 In r/o RC No. 18742 dated 05.08.2005, the Applicant in their reply letter dated 04.04.2006 submitted that

"Point No. II

This was an LCL shipment and the forwarders B/L does not mentioned Container No & Seal No on B/L. However the Mate Receipt shows Container No HJCU8955107 & Seal No. 210236.

Point No. III

We would like to inform you that the date shown on the forwarders Bill Lading is issuing date i.e. 23.0.05 and the vessel was sailed on 28.06.2005 which is clearly endorsed in the ARE-1 with custom seal & sign.

Point No. IV

We are enclosing herewith Certified copy of Shipping Bill."

13.4. Government notes that the "ARE-1 82/05-06" dated "13.06.2005", C.Ex.INV No. "73, DATED 11.06.05", "DUTY PAYABLE", "GOODS NEITHER SEALED NOR SUPERVISED BY ME UNDER S.R.P." was duly signed by the Central Excise Superintendent and Inspector. The Part 'B' shows Shipping Bill No. 3533564 dated 15/06/05 by S.S. No. HAMMRAB, ALEXANDRA 28/6/05, MTR/No.2308, and dt 28/6/05 duly signed by Custom officer. Further the Shipping Bill No. 3533564 / 15/06/05 shows the Chapter Heading as 54071039 , ARE-1 No. 82 date 13/06/2005, Vessel Name: HAMMRAB, Container No. HJCU8955107 Size: 20, Seal No. 210236, the Mate Receipt No. 2308 shows container No: HJCU8955107 , Custom Seal No. 210236 and the Bill of Lading No. BOMALX/MSF/0506/00017 dated 23 JUN 2005 shows the Container No: HJCU-895510/7 and S.B. No. 3533564 dt 15.06.2005. Hence Government finds that

(i) Bill of Lading No. BOMALX/MSF/0506/00017 dated 23 JUN 2005 and Shipping Bill No. 3533564 dated 15.06.2005 shows the same Container No: HJCU-895510/7 and the ARE-1 82/05-06 dated 13.06.2005 mentioned on Shipping Bill No. 3533564 dated 15.06.2005 is the same which was submitted with the claim.

(ii) The Applicant has not submitted any proof regarding the Chapter heading of the goods exported.

14. Further, Government finds that the Applicant has not submitted documents in respect of the 80 rebate claims total amounting to Rs. 93,18,746/- except RC No. 18742 dated 05.08.2005, ARE-1 No. 82/05-06 dt 13.6.05 (Para 13.3 above) so as to ascertain and verify whether the goods have

been exported. Further, Government finds that duty paid character of exported goods of all the 80 rebate claims were not proved, which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002. Therefore, Government holds that the rebate claims are not admissible.

15. Government also relies in the case of M/s Poddar Exports (India) Vs Union of India [2015(316) ELT 179 (Guj)] Hon'ble High Court Gujarat while dismissing the Special Civil Application filed by the petitioner observed as under :-

"Under the circumstances, when the transactions between the manufacturer (processor) and the merchant exporter (petitioner) are found to be bogus and when it has been established that the purported suppliers are fake and fictitious persons and the entire transaction is found to be only billing activities for the purpose of taking undue advantage of the Cenvat credit and/or the rebate, no error has been committed by the Authorities below in denying the rebate claims claimed by the petitioner.

5.1 Now, so far as the contention on behalf of the petitioner that as the petitioner had exported the goods on payment of duty the petitioner is entitled to rebate of Excise duty is concerned, the same arguments came to be considered by the Division Bench of this Court in Special Civil Application No. 13931/2011 [2013 (295) E.L.T. 387 (Guj.]]. At that stage also, the petitioner of that petition heavily relied upon the decision of this Court in the case of D.P. Singh (supra). While not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench of this Court 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."

In the present ease also, there are concurrent findings of fact given by all the authorities below with respect to the fake transactions between the petitioner and M/s. Raju Synthetics Pvt. Ltd., we are of the opinion that all the authorities have examined the case in detail and as such no interference is called for. The conclusions arrived at by the authorities below are on the basis of evidence on record and such conclusions are not pointed out to be perverse. Under the circumstances, as such no interference in exercise of powers under Articles 226 & 227 of the Constitution of India, therefore, can be made."

16. In view of above discussions and findings and also applying the ratio of afore stated cases law, Government holds that the impugned Orders of Commissioner (Appeals) are legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III and the same is upheld.

17. The Revision Application is dismissed being devoid of merits.


7/7/21
(SHRAWAN KUMAR)

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

ORDER No. 240/2021-CX (WZ)/ASRA/Mumbai

Dated 07.07.2021

To,
M/s Bindal Exports Pvt Ltd. (Formerly known as M/s J.B. Exports.),
270 Bindal House,
Kadodara Road, Kumbharia,
Surat-394 230.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, CGO Complex, Sector No. 10, CBD Celapur, Navi Mumbai - 400 614.
2. Sr. P.S. to AS (RA).
3. Guard file
4. Spare Copy.