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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**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/25/WZ/2018 / 3502

Date of Issue: 02.04.2023

ORDER NO. 245 /2023-CX(WZ)/ASRA/MUMBAI DATED 28.04.2023  
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 : M/s Alok Industries Limited,  
Survey No.521/1, 17/5/1, Village Rakholi Saily,  
Silvasa - 396 230, UT of D & N.H.

Respondent : The Commissioner of Central Excise & CGST,  
Daman Commissionerate, GST Bhavan,  
RCP Compound, Vapi - 396 191.

Subject : Revision Application filed under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
CCESA-SRT(APPEALS)PS-177/2017-18 dated  
13.11.2017 passed by the Commissioner (Appeals), CGST  
& Central Excise, Surat Appeals, Surat.

## ORDER

The subject Revision Application has been filed by M/s Alok Industries Limited, Silvassa (here-in-after referred to as 'the applicant') against the impugned Order-in-Appeal dated 13.11.2017 passed by the Commissioner (Appeals), CGST & Central Excise, Surat. The said Order-in-Appeal disposed of an appeal filed by the applicant against the Order-in-Original dated 28.08.2015 passed by the Deputy Commissioner, Central Excise, Customs & Service Tax, Division – V, Silvassa.

2. Brief facts of the case are that the applicant, a merchant exporter, had exported Polyester Texturized Yarn procured by them from its manufacturer viz. M/s Sumita Tex Spin Pvt. Limited, Silvassa. The applicant thereafter filed applications claiming rebate of the duty paid by the manufacturer under Rule 18 of the Central Excise Rules, 2002 read with notification no.19/2004-CE(NT) dated 06.09.2004. The original authority found that the manufacturer, who supplied the goods to the applicant, had debited the duty on such goods from their Cenvat credit balance which actually had to be treated as lapsed in terms of Rule 11(3) of the Cenvat Credit Rules, 2004, as the manufacturer had opted to avail of the exemption provided by notification no.30/2004-CE dated 09.07.2004. The original authority found that the manufacturer had been issued a Show Cause Notice seeking to disallow such credit by treating the same as lapsed. In light of these facts, the original authority rejected the rebate claims of the applicant on the grounds that duty purportedly paid was through non-existent Cenvat credit and hence the rebate of such duty would not be permissible. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) who vide the impugned Order-in-Appeal found that the charges in Show Cause Notice issued to the manufacturer had been confirmed by the Principal Commissioner, Central Excise & CGST, Silvassa and the Cenvat credit through which duty was paid on the goods cleared to the applicant, was ordered to be treated as lapsed. In view of the same, the Commissioner (Appeals) held that the goods on which the applicant claimed rebate was non-duty paid and hence rebate was not admissible; he upheld the order of the original authority and rejected the appeal filed by the applicant.

3. The applicant, aggrieved by the impugned Order-in-Appeal dated 13.11.2017 has filed the subject Revision Application on the following grounds: -

(a) That the Commissioner (Appeals) had erred in taking view that the decision in the case of M/s. Sheetal Exports 2011(271) E.L.T. 131 (G.O.1) and M/s. Vikram International Vs. Commissioner (Appeals) Mumbai [2012 (277) E.L.T. 425] cited by them were different to their case; that in the case of Vikram International Vs. Commissioner (Appeals) Mumbai, the Revisionary Authority had held that Exporter was purchasing goods from manufacturer and Central Excise invoices showing payment of duty with particulars of manufacturers, address, value etc. and no evidence on mutually of Interest, financial control or flow back of fund between the two, rebate claim of exporter could not be rejected on ground that manufacturer had availed Cenvat credit on bogus invoices; that there was no allegation against exporter and they could not be penalized by denial of rebate claim; that it was further held that merchant exporter has to take reasonable steps to satisfy itself about existence, identify and address of supplier/ manufacturer on facts as there was no dispute on central excise registration of supplier, their identity and documents supplied with rebate claim; that in the case of Sheetal Exports, the Revisionary authority has held that manufacturer Merchant Exporter could not be held responsible for not taking reasonable steps in terms of Rule 9(3) of Cenvat Credit Rules, 2004;

(b) That in their case the goods were supplied under cover of duty paying Central Excise documents and the invoice issued by manufacturer indicated the duty amount paid by manufacturer and that they had made payment of total amount inclusive of Central Excise duty; that the Government in its Order No.304-307/07 dated 18-05- 2007 in the case of Shyam International, Mumbai held that the basic requirement to be fulfilled by the merchant exporter to make the rebate claim admissible to him is that the goods should be supplied to the merchant-exporter under the cover of duty paying Central Excise documents and there should not be any charge or allegation that the

transaction between the exporter and the manufacturer/supplier was not at arm's length or not in the nature of a transaction in the normal course of business or non-bona fide and influenced by any extra commercial consideration or there is any mutually of interest and financial control of any flow back of funds between the merchant-exporter and the manufacturer/supplier of the goods; that they had fulfilled this criteria; that they had taken all reasonable steps to satisfy themselves about the existence, identity and address of the supplier-manufacturer; that their issue was similar to the above mentioned cases;

(c) That their case was different from that in the Board's circular No.766/820/2003 Cx- dt 15-12-2003 as it pertained to circumstances when the supplier defaulted in payment of duty under Rule 8 of Central Excise Rules, 2002; that in their case there was no charge of allegation that the transaction between manufacturer/Exporter was not arm's length or not in the nature of a transaction in the normal course of business or non-bonafide and influenced by any extra commercial consideration; that the only charge or allegation forming the genesis and basis for denial of rebate claim to the merchant exporter is therefore not against them but the manufacturer supplier who utilized duty payment of goods exported by the merchant exporter;

(d) That the Order in Original certifies that the goods were manufactured by M/s. Sumita Texspin Pvt.Ltd and supplied to them under proper Central Excise documents; that the goods were exported by them; that only they have claimed the rebate; that the claim had been filed before the proper officer within the time limit and with all documentary proof as required; that they could prove that that they had realized all the export proceeds which was one of the main objective and purpose of exports to other countries; and that in view of the above facts, it was submitted that they were eligible for rebate;

(e) They sought to rely on the following decisions in support of their case - M/s. Parasrampur Ltd. Vs. CCE Jaipur 2005 (191) E.L.T. 899 (Tri.Del.); Bhairav Exports vs CCE [2007 (210) E.L.T. 136 (Tri. Mumbai)] and Vikram

International vs C(A), Mumbai, [2012 (277) E.L.T. 425 (G.O.I)] in support of their case.

In view of the above, the applicant prayed that the impugned Order-in-Appeal dated 13.11.2017 and Order-in-Original dated 28.08.2015 be set aside and the rebate be allowed to them.

4. Personal hearing in both the above cases was held on 10.01.2023. Shri Ramnath Prabhu, Advocate appeared online on behalf of the applicant and submitted that only case of the Department is that manufacturer was availing exemption and was hence required to reverse certain credit. He further submitted that bonafide purchaser cannot be made to suffer for fault if any, of manufacturer supplier. He further submitted that as a trader exporter applicant have done nothing wrong. He requested to allow the claim.

5. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Order-in-Original and the impugned Order-in-Appeal.

6. Government finds that the issue involved is whether the applicant, a merchant exporter, can claim rebate of the central excise duty purportedly paid by the manufacturer through their Cenvat credit account, when no balance of credit was available in the Cenvat credit account of the manufacturer. Government notes that a Show Cause Notice dated 14.07.2014 was issued to the manufacturer as they had not treated the balance of Cenvat credit available as on 01.07.2007 as lapsed, in light of their opting for availing the benefit of exemption notification no.30/2004-CE dated 09.07.2004. Government finds the charges in this Show Cause Notice were upheld by the Principal Commissioner, Central Excise, Customs & Service Tax vide Order-in-Original dated 03.07.2015 wherein the adjudicating authority had ordered that such balance of Cenvat credit available as on 01.07.2007 will be treated as lapsed. Government notes that

the applicant has not submitted that this order of the Principal Commissioner has been set aside; thus it follows that the same is in force which in turn implies that all clearances made by the manufacturer during the said period, wherein duty was purportedly paid through the Cenvat credit account which actually had no balance, will have to be treated as clearances without payment of duty. Government notes that the applicant had applied for rebate under Rule 18 of the Central Excise Rules, 2002 which provides for rebate of duty paid on the goods which have been exported. Thus, two primary requisites for being eligible to claim rebate are that duty should be paid on the goods and the same should be exported. In the present case the fact of the goods being exported is not in doubt, however, as discussed above, it is clear that the central excise duty has not been paid on the goods exported by the applicant. Government finds that the Commissioner (Appeals) has correctly held that in this case there was no payment of duty on the goods and when the goods are non-duty paid, rebate on export thereof cannot be granted. Government notes that the Commissioner (Appeals) had already distinguished the decisions which have been cited by the applicant in the subject Revision Application and had found that they would not be applicable to the instant case as in this case there just was no credit available in the account from which the manufacturer indicated that they had paid duty, the rebate of which has been sought by the applicant.

7. Government finds support in the decision of the Hon'ble High Court of Gujarat in the case of Diwan Brothers vs UOI [2014 (309) ELT 244 (Guj)] wherein the Court had held that unless it is proved and established that the manufacturer had paid duty on the very same goods which were exported by the merchant manufacturer, they would not be eligible to claim the rebate of the same. Government finds that the Revisionary Authority in the case of Uniworld Telecom Limited [2018 (364) ELT 1137 (GOI)] involving an identical issue had held that since Cenvat credit was non-existent at the time of export, rebate of duty paid from such non-existent credit was not admissible. Further, Government finds that the Hon'ble High Court in the

case of UOI vs Rainbow Silks [2011 (274) ELT 510 (Bom)] had set aside an Order which had allowed the plea of an exporter that they should not be denied rebate for the incorrect availment of Cenvat credit by the manufacturer. Government finds that the decision of the Commissioner (Appeals) in the impugned Order-in-Appeal is in consonance with the above decisions which are squarely applicable to the issue on hand.

8. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal No. CCESA-SRT(APPEALS)PS-177/2017-18 dated 13.11.2017 passed by the Commissioner (Appeals) and upholds the same.

9. The subject Revision Application is rejected.

  
(SHRAWAN KUMAR)

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

ORDER No. 246 /2023-CX (WZ) /ASRA/Mumbai dated 27.04.2023

To,

M/s Alok Industries Limited,  
Survey No.521/1, 17/5/1, Village Rakholi Saily,  
Silvasa - 396 230, UT of D & N.H.

Copy to:

1. Commissioner of Central Excise & CGST, Daman Commissionerate, GST Bhavan, RCP Compound, Vapi - 396 191.
2. The Commissioner of CGST & Central Excise, Appeals Commissionerate, Surat, 3<sup>rd</sup> floor, Magnus Mall, Althan Bhimrad Canal road, Near Atlantas Shopping Mall, Althan, Surat - 395 007.
3. M/s TLC Legal, Advocates, 1<sup>st</sup> & 19<sup>th</sup> Floors, Nirmal, Nariman Point, Mumbai - 400 021.
4. Sr. P.S. to AS (RA), Mumbai.

s. Notice Board.