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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. 195/1262/12-RA / 1137

Date of Issue: 13.02.2018

ORDER NO. 26 /2018-CX (WZ) /ASRA/MUMBAI DATED 12.02.2018 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER&EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

**Applicant** : M/s. Vidhartri Exports, 5/A/109, Sanjay Building, Mittal  
Industrial Estate, Andheri Kurla Road, Andheri, Mumbai 59.

**Respondent:** Commissioner, Central Excise, Raigad.

**Subject** : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/426/RGD/2012 dated 10.07.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai



**:ORDER:**

This revision application has been filed by M/s. Vidhartri Exports, 5/A/109, Sanjay Building, Mittal Industrial Estate, Andheri Kurla Road, Andheri, Mumbai -400 059 (hereinafter referred to as "the applicant" against the Order-in-Appeal No. US/426/RGD/2012 dated 10.07.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II.

2. The case in brief is that the Deputy Commissioner of Central Excise (Rebate), Raigad vide Order-in-Original No.1438/11-12/DC (Rebate) / Raigad dated 14.12.2011 rejected 29 rebate claims amounting to Rs. 17,96,815/- filed by the applicant on the following ground that:

- that the duty was paid on the exported goods through non-existent / bogus credit which amounted to non-payment. The exported goods i.e. processed fabrics were procured from M/s Swastik Poly Prints Pvt. Ltd., Surat (28 consignments/claims) and M/s Luthra Dyeing and Printing Mills Surat (one consignment/claim). The jurisdictional Range Superintendents had been requested to confirm the authenticity of the duty payment at the processors' end who vide letter dated 8.4.2010, informed that the verification of input Cenvat Credit was not possible as on inquiry was going on against M/s Swastik Poly Prints Pvt. Ltd., and M/s Swastik Poly Prints Pvt. Ltd., had informed that all their records had been seized by the DGCEI Vadodra and the matter was under investigation. In respect of M/s Luthra Dyeing and Printing Mills, verification report was not received from the Range Superintendent. The adjudicating authority further observed that both the processors i.e. M/s Swastik Poly Prints Pvt. Ltd. and M/s Luthra Dyeing & Printing works were figuring in the Alert Notices issued by DGCEI, Surat-I Commissionerate and Thane-I Commissionerate bearing Nos. INV/DGCEI/SRU/3/08/794:IV/9-HPU-V/63/ 04-05 and V/PI/TH-1/12-5/Pt-VII for availment of



Cenvat credit on the basis of invoices issued by fraudulent and non-existing firms/grey fabrics.

- the processors were availing benefits under Notification No. 29/2004 and in terms of section 5(1A) of the Central Excise Act, the manufacturers had no option but to avail the exemption under Notification No. 30/2004 CE dated 9.7.2004.

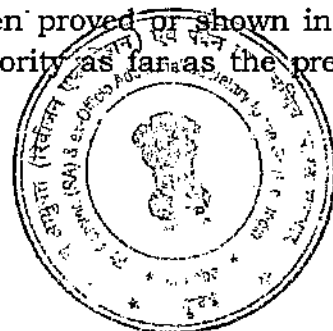
3. Vide impugned Order-in-Appeal, the Commissioner (Appeals), upheld the above Order-in-original only on one ground i.e the duty was paid on the exported goods through non-existent firms / bogus credit which amounted to non-payment and therefore rebate could not be granted.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the various grounds as enumerated in their application. Main grounds of appeal are follows;

4.1 That the Ld. Commissioner (Appeals) failed to appreciate that the documents for each set for all 29 exports establish the export beyond the doubt. Further the Applicants have received the Foreign Exchange against all the exports. Which was established as per the Bank Realization Certificate received and furnished in the matter. The receipt of Foreign Exchange against each export clearly prove that goods have been received by the Foreign Buyers to their entire satisfaction.

4.2 That the Commissioner Appeal has wrongly rejected the acceptance of gray invoices submitted by the Applicants to the Processor to prove that there transaction are transparent and bonafide in nature and are not influenced by any extra commercial consideration and there was no involvement of the Applicants in committing any fraud or excess availment of Cenvat Credit due to bogus invoices. Further goods have been cleared on self-removable basis against ARE-1 which was jointly signed by merchant Exporter and Processor and further endorsed by the Customs giving all the details of Exports i.e. S/B and Mate Receipt.

4.3 That the Adjudicating Authority and Appellate Authority both failed appreciate that there is no fraud has been proved or shown in any inquiry and/or investigation by any Authority as far as the present

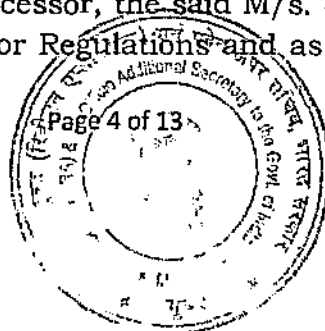


exports are concerned. Even both Adjudicating and Appellate Authority failed to point out that any fraud has been committed by any processor and/or merchant exporter in present exports. The claims are rejected only on the basis of surmises and conjunctures. Further no evidence furnished by the adjudicating Authority for submitting to the Appellate Authority. Even if specifically called for by the Advocate of the Applicants till date.

- 4.4 The decision in the case of Union of India Vs. Raibow Links 2011 (274) E.L.T. 510 (Bom.) in the High Court of Judicature at Bombay Dr. D.Y. Chandrachud and Anoop V. Mohtaas relied upon by the Respondent was not applicable in the present facts and circumstances of the case. The above case has been on the issue of Cenvat credit availed on the basis of bogus documents. In the present case all the documents are genuine. Goods have been processed by the existing processors working under Central Excise. The goods have been duly exported after following proper procedures.
- 4.5 That the Applicant being a Merchant Exporter cannot be denied rebate for the reason that the manufacturer had availed the Cenvat Credit wrongly on the basis of the bogus documents, especially when there was no evidence to show any mutuality of interest, financial control, or flow-back of funds between the merchant exporter and the manufacturers/ suppliers of goods. It was submitted that transaction between supplier and the Applicants has been at arm's length transaction, bonafide entered into between the two parties.
- 4.6 The case of Sheetal Exports 2011 (271) E.L.T. 461 (G.O.I) is not applicable in facts and circumstances of the case. The instruction issued by the CBEC Circular No. 766/82/2003-CX, dated 15.12.2003 are very clear and have been ignored by the adjudicating Authority and Appellate Authority wherein para 5 of the said instructions states as follows:

*"5. On the issue of availment of credit by the user-manufacturer, it is clarified that action against the consignee to reverse/ recover the CENVAT Credit availed of in such cases need not be resorted to as long as the bonafide nature of the consignee's transaction is not in dispute."*

- 4.7 That there is no evidence to effect that the transaction between the Applicants and the processor, the said M/s. Swastik are bogus or in violation of any Rules or Regulations and as such the rebate claims need to be allowed.



M.P.

5. A personal hearing was held in this case on 27.12.2017. Shri Kaushik I. Vyas, Advocate and Shri Deepali Kamble, Advocate duly authorized by the applicant appeared for hearing and reiterated the submission filed with Revisionary Authority and submitted written submission, copy of orders of Joint Secretary, (Revisionary Authority), copy of genuineness of existence of suppliers. In view of the same, it was pleaded that the Revision Application may be allowed and the Order-in-Appeal be set aside.

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. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was rejected on the ground as mentioned in para supra.

7. Government notes that the only contention of the Appellate authority i.e. Commissioner (Appeals) for rejecting the rebate was that the duty was paid on the exported goods through non-existent firms / bogus credit which amounted to non-payment. Government notes that rebate claim was rejected by the original authority on the ground that applicant got their impugned goods processed from two processors namely M/s Swastik Poly Prints Pvt. Ltd and other M/s Luthra Dyeing & Printing Works, who were kept under alert vide DGCEI alert notice No.INV/DGCEI/SRU/3/08/794, Surat-I Commissionerate alert notice No.IV/9-HPIU-V/63/04-05 and Thane I Commissionerate alert notice .No.V/PI/TH-1/12-5/Pt-VII, respectively, for avilment of Cenvat credit on the basis of invoices issued by fraudulent and non-existing firms/ grey fabrics manufacturers. It was revealed in the investigations carried out by the DGCEI that these grey fabrics suppliers were either non-existent or had not supplied any grey fabrics. They had supplied only duty paid documents i.e., Central Excise invoices to the processors without supplying the corresponding goods. After confirmation of modus operandi DGCEI also issued a Notice No.DGCEI/AZU/36-153/2010-11 dated: 15.12.2010.

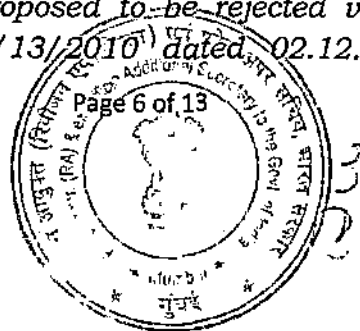
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8. The original authority also based its finding that from the investigations (which were incorporated in the notice) the Main processor in the instant case has stated that they have received grey fabrics from many suppliers including M/s Shivam Textiles, M/s Priyadarshni Fabrics Pvt. Ltd., M/s Hindustan Garments, M/s Agarwal Twisting Works etc. They were taking Cenvat Credit on the basis of Excise Invoices issued by the suppliers, which were provided by the Exporters as the material was procured by them. That the genuineness of invoices received from the suppliers were never verified, that there were no markings, name of the manufacturer on the grey fabrics to co-relate with the duty paying documents. They have also confirmed that they have availed credit on the basis of invoices issued by non-existent firms, fake invoices, Non-duty paid invoices and utilized the same for payment of duty on exports. Further, as per the provisions of the Cenvat Credit Rules, all the credits received are pooled together known as Cenvat Credit Account and the duties are paid from the said pool. There was no correlation between the duty paying documents and the material receipts, as such, it was impossible for the claimant to prove that the duty payments for the impugned exports are from genuine credits.

9. Government notes that the applicant, during the hearing on 27.12.2017 have submitted synopsis, wherein they relied on Government of India's Order No. 1370-1371/13-CX dated 11.11.2013 in case of Akshita Exports. Government has carefully gone through the above order. Para no. 4.4.3 & para no. 8 of the order are worth mentioning and relevant to this case and the same read as under;

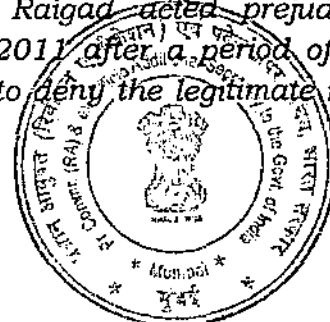
*"4.3.3 On 09.04.2008, DGCEI, Vadodara searched the premises of the present applicant and withdrawn all records for verifying the grey suppliers invoices whether the said grey suppliers/manufacturers are in existence or not. Accordingly, the entire records of the applicant were scanned by the said DGCEI authority and had found that out of several grey manufacturer suppliers five grey manufacturer suppliers were found non-existent and therefore the rebate claims of Rs.53020571- was proposed to be rejected vide show cause notice F.No.INV/DGCEI/BRU/13/2010 dated 02.12.2010 and other grey*



suppliers and their registration were found genuine which are as under:-

1. MaaKrUpa Textile
2. PrahaladbhaiKanjibhal (HUF)
3. Sadguru Fabrics
4. ArvindhbaiKanjibhai HUF
5. Krishna Corporation
6. Sabir Textiles
7. Mahaball Fabrics
8. Shikha Textiles
9. **Agarwal Twisting Works**
10. Jyoti Silk Mills
11. Indian Polyfins P. Ltd.
12. Saraswat Trading Investment Co.
13. Singhal Brothers
14. Rahul Textiles
15. Saraswat Industries
16. P.Kumar Fabrics
17. Bharat Enterprises
18. M.B.Twister
19. Shree Hari Fabrics
20. Sanjay Textile
21. Shree Tirupati Synthetics
22. Shreenathji Textiles
23. Shri Tejanand Silk Mills
24. Hanuman Textiles
25. Hardik Sales
26. **Priyadarshini Fashion P.Ltd.**
27. Shree Hariom Silk Industries
28. Mahalaxmi Corporation
29. Ram Tex Fab

4.4.3 Even after scanning of the grey supplies by Director General of Central Excise Intelligence, Vadodara and their Show Cause Notice dated 02.12.2010, the rebate for export of the goods were not processed and therefore the applicant had preferred writ petition in the High Court of Bomaby vide number 5878 of 2011 for sanction and grant of ,rebate of Rs. 80,71,603/- which was disposed of on 01.08.2011 directing the rebate sanctioning authority to dispose of the rebate claims within a period of six months from 01.08.2011. Instead of disposing of the rebate claims considering the DGCEI Show Cause Notice F.No.INV/DGCEI/BRU13/2010 dated 02.12.2010, the Deputy Commissioner, Central Excise (Rebate), Raigad acted prejudicially issuing Show Cause Notice dated 15.12.2011 after a period of more than five years on technical grounds just to deny the legitimate rebate



claims of the applicant and ultimately rejected the rebate claims against which appeal was preferred to Commissioner(appeals) who accepted several contentions of the applicant and however, upheld the order of the rebate sanctioning authority on the ground that the applicant did not produce evidence of genuineness of Cenvat Credit availed by the processors. The finding of the Commissioner (Appeals) appears to be incorrect when the Director General of Central Excise Intelligence, Vadodara Regional Unit while issuing Show Cause Notice dated. 02.12.2010 have dearily found out that except five grey suppliers, other grey suppliers are found genuine and correct and in existence and duty paid nature of grey fabrics is accepted in exhaustive investigation which are the basis of evidence and therefore the finding of the Commissioner(Appeals) without accepting the said evidences that the applicant did not produce evidence of genuineness of the Cenvat Credit availed by the processors (M/s Swastik Poly Prints Pvt. Ltd. And M/s Agarwal Textile Mills) have vitiated the legitimate and genuine claim of the applicant. In view of this, the judgments cited by the Commissioner(appeals) of Rainbow Silk Mills and others in his order is not applicable as the facts of the case based on evidences is quite distinguishable.

8. Government first takes up the revision application No.195/1462/12-RA for decision wherein the rebate claims amounting to •Rs.5178049/- WAS rejected by the original authority on the ground that the applicant Oot their impugned goods processed from two processors namely Mis Agrawal Textile Mills, Surat and M/s Swastik Poly Prints Pvt. Ltd., Surat, who received grey fabrics from five bogus/non-existent firms namely; M/s Shivam Textiles, M/s Hindustan Garments, M/s Mail Silk Mills, M/s Suryanarayan Textile and M/s SK Textiles as revealed \*in DGCEI investigation and paid duty on exported goods from wrongly availed cenvat credit on the basis of bogus invoices raised by saidbogus firms. The rebate claims were denied since actually no duty was paid on said goods.

8.1. Government observes that the DGCEI investigated the case and issued show cause. notice. INV/DGCEI/BRU/13/2010 dated 2.12.2010 wherein they .categorically stated that the said five suppliers were non-existent; that the processors availed cenvat credit on the basis of bogus invoices issued in the name of said five bogus suppliers; that the facts of the case clearly proves culpability of the merchant exporter; and that payment of duty from such fraudulently availed cenvat credit cannot be treated as payment of duty for granting rebate





*under Rule 18 of Central Excise Rules 2002. The DGCEI has issued a separate SCN No.DGCEI/AZU/36- 134/2010-11 dated 2.12.10 for recovery of fraudulently availed cenvat credit on the basis of invoices issued by said five bogus/non-existed grey fabrics suppliers. The said SCN is issued to processors and applicant M/s Akshita Exports is also a co-noticee in that case of fraudulent availment of cenvat credit. The applicant in their written submission dated 26.9.2013 has stated that the said charges in the SCN was confirmed vide adjudication order dated 25.1.2012. As such, the applicant had facilitated the wrong availment of Cenvat credit by showing purchase / supply of grey fabrics on his account from the non-existent grey suppliers. Under such circumstances, the applicant was party to said fraudulent availment of Cenvat credit & then payment of duty fraudulently from such credit, on exported goods. As such, applicant was party to said fraudulent availment of Cenvat credit and the transaction between manufacturer and exporter was not bonafide.*

10. From the aforesaid paras Government observes that it was categorically mentioned that out of several grey manufacturer supplier there were five grey manufacturer suppliers were found to be non-existent. Out of these five grey manufacturer supplier, two viz M/s Shivam Textiles and M/s Hindustan Garments are in the list who have been shown to supplied the grey fabrics to M/s Swastik Poly prints Pvt. Ltd., and M/s Luthra Dyeing & Printing Works from whom M/s Vidharti Exports, the exporter, procured the goods and exported the same. (Refer para 8 above). Hence, the findings of the original authority holds good that duty was paid by the processor of the applicant was through an account, which was a pool accumulation consisting of duty credits of non-existence firms/bogus firms; duty credits of Non-duty paid invoices; duty credits of fake invoices.

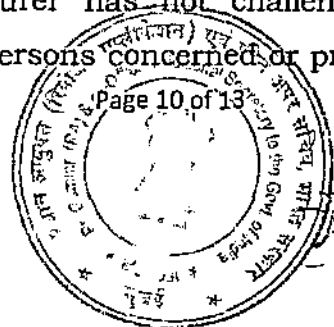
11. On perusal of records, it is observed that applicant M/s. Vidharti Exports, filed different rebate claims of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002. The said claims were rejected by adjudicating authority on the ground that the duty on exported goods was paid out of Cenvat credit taken on invoices raised by fake/fictitious firm/persons. The said order-in-original was upheld by Commissioner



(Appeals). Now, the applicant has filed this revision application against the orders of Commissioner (Appeals) on the ground stated supra.

12. Government notes that whatever counter arguments put forth by the applicant, on department's conclusion which were based on properly and reasonably caused investigations, were on the basis of their self-interpretations of relevant Rules / Regulations / Circulars / Citations. But, the Government notes that what remains a fact is that due investigations were indeed done and the proper authorities conclusively proved that the instant cases are "frauds" involving fake/fictitious identities. The Applicant relied upon the on Government of India's Order No. 1370-1371/13-CX dated 11.11.2013 in case of Akshita Exports, however in this case also Government notes that Akshita Exports, the appellant in that case along with processors viz M/s Agarwal Textile Mills and M/s Swastik poly prints pvt. Ltd., were issued show cause notice, on the ground that the duty for which the rebate claims were filed had been paid out of Cenvat credit availed by the processors on the strength of bogus / fake invoices.

13. The applicant pleaded that they procured processed fabrics from the manufacturer and wrongly availed credit is to be recovered from manufacturer or the supplier of grey fabrics. The applicant being merchant exporter cannot be denied rebate for the reasons that the manufacturer had availed the Cenvat Credit wrongly on the basis of the bogus documents, especially when there was no evidence to show any mutuality of interest, financial control or flow-back of funds between the merchant exporter and the manufactures / supplier of goods. In this regard, it is observed that during investigation by department the suppliers of grey fabrics were found non-existent and accordingly vide Alert Circular issued by Commissioner of Central Excise, Surat-I, Director General of Central Excise Intelligence and Thane-I Commissionerate, the said units were declared as fictitious. No processor came forward to claim that suppliers were not fake units. Even, the applicant's manufacturer has not challenged the said circular by arranging appearance of persons concerned or producing any affidavit from



such persons to claim the existence of the said units. It is also a fact that both Exporter and Processor have signed the ARE-1s, hence government feels that exporter cannot escape his responsibility under the Rules on the pretext that he was not involved in bogus transactions and these fact clearly establish that manufacturer and exporter are in hand and gloves and can be said as related having interest in each other and both parties are party in claiming the fraudulent rebate claim.

14. Government finds that it was trade practice that deemed manufacturers/manufacturer would buy the grey fabrics and send it to processors for processing and then the processors shall return the processed fabrics to deemed manufacturers. As such the applicant also appears to be a deemed manufacturer who has procured the goods from suppliers of grey fabrics and got it processed from the processors. In view of these facts it is clear that applicant played an active role in arranging these bogus transactions. Since the suppliers of grey fabrics did not exist the transactions shown as supplier of grey fabrics on central excise invoices, is a fraudulent and bogus transactions created on paper to wrongly avail the Cenvat credit for the purpose of bogus payment of duty and irregular/fraudulent availment of rebate claims.

15. In the case of Omkar Overseas Ltd. [2003(156) ELT 167(SC)] Hon'ble Supreme Court has held in unambiguous terms that rebate should be denied in cases of fraud. In *Sheela Dyeing & Printing Mills (P) Ltd.* [2007 (219) E.L.T. 348 (Tri.-Mum.)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgement has been upheld by the Hon'ble High Court of Gujarat. In a judgement in the case of *Chintan Processor* [2008 (232) E.L.T. 663 (Tri.-Ahm.)], the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as follows:

*"Once the supplier is proved nonexistent, it has to be held that goods have not been received. However, the applicant's claim that they have*

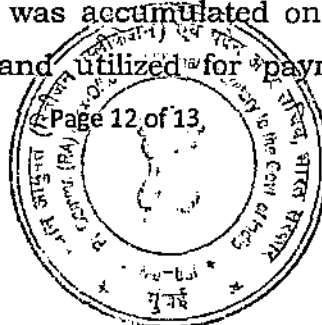


*received goods but how they have received goods from a non-existent supplier is not known."*

17. 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 Gujrat, 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."*

18. 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 ie., 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



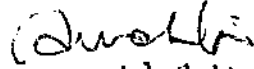
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exported, it was held that "since there was no accumulation of cenvat credit validly in law, there was no question of duty being paid therefrom" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

19. In view of above, Government finds that duty paid character of exported goods was not proved, which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002. Therefore, Government holds that the rebate claim is not admissible to the applicant.

20. As such, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same and rejects the Revision Application filed by the applicant being devoid of merit.

21. So, ordered.

  
12.2.18  
(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India


ORDER No 26 /2018-CX (WZ) /ASRA/Mumbai DATED 12.02.2018

To,  
M/s. Vidhartri Exports,  
5/A/109, Sanjay Building,  
Mittal Industrial Estate, Andheri Kurla Road,  
Andheri, Mumbai -400 059.

True Copy Attached

Copy to:

1. The Principal Commissioner of CGST & CX, Belapur Commissionerate, CGO Complex, Belapur, Navi Mumbai, Thane.
2. The Commissioner of GST & CX, (Appeals) Raigad, 5<sup>th</sup> Floor, CGO Complex, Belapur, Navi Mumbai, Thane.
3. The Deputy / Assistant Commissioner (Rebate), GST & CX Belapur
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

  
एस. आर. हिरुलकर  
S. R. HIRULKAR  
(A.C)

