

REGISTERED SPEED POST



सत्यमेव जयते

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.198/500/11-RA (Remand) 53

Date of Issue: 24/02/20

ORDER NO. 285 /2020-CX (WZ) /ASRA/MUMBAI DATED (3.2.2020) OF THE
GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, 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, Customs, & Service Tax, Raigad.

Respondent : M/s Vandana Overseas, 177/11, GIDC, Pandesara,
Surat - 394 221.

Subject : Revision Applications filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.YDB/507/ RGD
/dated 03.05.2011 passed by the Commissioner of Central
Excise (Appeals-II), Mumbai.



ORDER

This revision application is filed by the Commissioner of Central Excise, Customs and Service Tax, Raigad (hereinafter referred to as "the applicant") against the Order-in-Appeal No. YDB/507/RGD/2011 dated 03.05.2011 passed by the Commissioner of Central Excise (Appeals-II), Mumbai .

2. The issue in brief is that the respondent, M/s. Vandana Overseas a merchant exporter situated at 177/11, GIDC, Pandesara, Surat - 394 221 had procured excisable goods from M/s Rachna Art Prints Pvt. Ltd. The respondent exported the goods so procured and filed 14 rebate claims amounting to Rs.12,81,627/-. The Assistant Commissioner, Rebate, Central Excise, Raigad vide Order-in-Original No. 1169/10-11/AC(Rebate) / Raigad dtd.21.10.2010 rejected the 14 rebate claims amounting to Rs.12,81,627/- on the ground that the manufacturer was governed by Notification No. 30/2004-CE dated 09.07.2004 and the exported goods were exempt under Notification No. 30/2004-CE dated 09.07.2004 and thus amount paid by the manufacturer cannot be termed as duty of excise. Also a Show cause notice (SCN) bearing no. V (Ch 54)3-77/ Addl/Dem/AD/2008-09 dated 20.10.2008 for Rs.33,90,576/-was issued to M/s Rachna Art Prints Pvt. Ltd. for wrong availment of Cenvat credit on the basis of issued fake/bogus invoices of non-existent grey manufacturer. The Additional Commissioner of Central Excise, Surat-I vide Order in Original No 45/Adj/ADC-PSK/ DEM/2009-10 dated 31.07.2009 confirmed demand of Rs.27,57,221/- and M/s Rachna Art Prints Pvt. Ltd. paid the said amount of Rs.27,57,221/- vide various TR 6 Challans on various dates, towards such wrong availment of Cenvat Credit. The adjudicating authority held that when the manufacturer had wrongly ~~taken the credit and later paid back the same, the manufacturer cannot be said to have taken the Cenvat Credit.~~ Accordingly adjudicating authority rejected all 14 rebate claims of Rs.12,81,627/- filed by the respondent.

3. The Order-in-Original was appealed against by the respondent before Commissioner (Appeals-II), Mumbai. The Commissioner (Appeals) while allowing the appeal filed by the respondent observed that

..... "under Notification No.29/2004-CE dated 29.07.2004, the goods were chargeable to concessional rate of duty, if Cenvat Credit had been availed on the inputs used in the manufacture. The goods had been cleared for export on payment of duty under claim of rebate in the months of November 2004; December2004; and February, 2005. The manufacturer

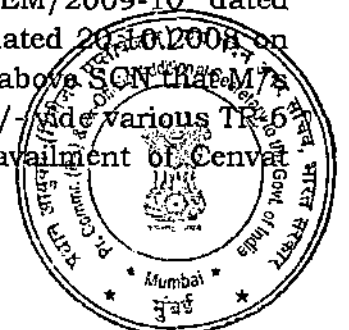
had taken credit on the inputs used in the manufacture of finished fabrics. Therefore, the duty was paid as per Notification No.29/2004-CE dated 29.07.2004.

.....In the instant case the Cenvat Credit had been taken and utilized during the period November 2004 to February, 2005. The goods were exported and the rebate claims were filed during the period January 2005 to February, 2006. The Show Cause Notice was issued to the manufacturer for recovery of the Cenvat Credit on 21.10.2008 i.e. after nearly four years. The admissibility of the rebate claims had to be decided, when they were filed in 2005-2006. The rebate claims could not be rejected on the basis of a development that took place at the manufacturer's end after nearly four years. Further recovery of an amount equal to the Cenvat credit availed and utilized did not mean that credit was not taken at all and it is only when the credit taken is reversed before utilization it may be treated as amounting to not taking credit. Once it is utilized, it cannot be possibly reversed. Further the assessment of the goods cleared on payment of duty by the utilization of the wrongly taken credit cannot be separately reopened, in addition to recovery of an amount equal to wrongly taken credit. In any case that could be done in a separate proceeding only . The law is settled that unless the assessment is challenged in such a case, the rebate cannot be denied when the goods have been exported.

Accordingly, Commissioner (Appeals) allowed the appeal filed by the respondent.

4. Being aggrieved the Department filed the revision application against the impugned Order in Appeal on following grounds :

- 4.1 The Original adjudicating authority vide Order-in-Original No. 1169/10-11/AC (Rebate)/ Raigad dtd.21.10.2010 in para 4 has held that in the case of 14 rebate claims verification of duty payment was done with the jurisdictional Range Superintendent of Central Excise who vide letter F.No. R-I/DPC/Rachna/2007-08/232 dated 03.12.09 informed that Show cause notice (SCN) bearing no.V(Ch 54)3-77/Addl/Dem/ AD/2008-09 dated 20.10.2008 for Rs.33,90,576/-was issued to the manufacturer for wrong availment of Cenvat credit on invoices issued by fake/bogus invoices of non-existent grey manufacturer. The Additional Commissioner of Central Excise, Surat-I vide Order in Original No 45/Adj/ADC-PSK/DEM/2009-10 dated 31.07.2009 confirmed the above mentioned SCN dated 20.10.2008 on the ground indicated therein. It is indicated in the above SCN that M/s Rachna Arts Prints Pvt. Ltd has paid Rs.27,57,221/- vide various T-6 challans on various dates, towards such wrong availment of Cenvat



Credit. The Additional Commissioner of Central Excise, Surat-I has appropriated the said amount of Rs.27,57,221/-. Therefore, it is evident that no Cenvat Credit on grey fabrics had been taken by the manufacturer as the documents on which credit was availed proved to be fake/bogus/non existent.

4.2 Therefore, if it is proved that at a given time if it is found that Cenvat Credit was not admissible for whatever reason, its consequences would be that the payment made for clearances of goods utilizing that credit is considered "clearance without payment of duty". Therefore, it appears that the impugned OIA dated 03.05.2011 is not proper and legal.

5. In their cross objection filed against revision application, the respondent contended :-

5.1 that at the time of payment of duty the duty was proper and correct and the same is upheld by the Commissioner (Appeals). Further whatever credit was wrongly taken same has been paid by the Manufacturer. The Department if aggrieved by the debit of the Cenvat credit should have taken action against the manufacturer for wrong credit. ~~The Respondents are not responsible for the same and as stated in the Order in Appeal no action has been taken against the assessment by the Department against the manufacturer within the stipulated period. The manufacturer has already paid the duty in response to show cause notice 20.10.2008 and merchant exporter reimbursed the same to the manufacturers. Further manufacturer paid all the wrong cenvat credit availed. Therefore, the rejection of Rebate claim is not only the double recovery once from the manufacturer and again from the Exporter/Respondent but also beyond the period of limitation.~~

5.2 Section 3 of the Act i.e. duty should be paid by the manufacturer. In this case they are merchant exporters and M/s. Rachna is the manufacturer. M/s. Rachana has paid the full amount of the irregular Cenvat credit availed and there is no allegation against Rancha that the debit of duty against the Respondents cleared for export is not proper and correct. Once the irregular credit taken has been reversed there is no question of denying the rebate.

6. The said Revision Application was decided by Government vide GOI Order No. 15/2018-CX(WZ)/ASRA/Mumbai Dated 31.01.2018 by allowing department's Revision Application.

7. The said GOI order was challenged by the respondent by way of Writ Petition No. 8617 of 2018 before Hon'ble Bombay High Court. The Hon'ble Bombay High

Court vide Order dated 05.07.2019, remanded the case back to this authority by observing as under:- pursuance

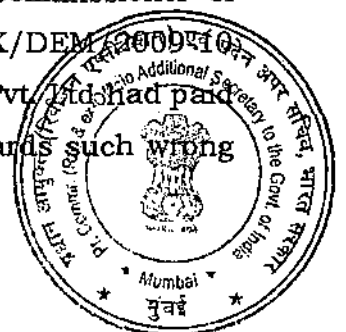
"the entire basis/ foundation of the orders passed against Petitioner, denying the benefit of rebate under Rule 18 of the said Rules, was the order dated 31st July, 2009 passed by the Additional Commissioner of Central Excise in the case of M/s Rachana. The aforesaid order dated 31st July, 2009 in the case of M/s Rachana, has now been set aside by the Tribunal and a fresh order dated 31st May, 2019 was passed by the Adjudicating Authority holding that the demand on M/s. Rachana for reversal of CENVAT Credit is not maintainable.

In the light of the subsequent developments, which have taken place in these proceedings and now brought on record, it would be appropriate that the impugned order dated 31st January, 2018 of the Government of India in Revision, be set aside. Respondent-Revenue's Revision Application is restored to the Government of India in Revision, for fresh consideration, taking into account the subsequent developments viz :- fact that the notice dated 20th October, 2008 issued to M/s. Rachana, has now been withdrawn / set aside by the order dated 31st May, 2019 passed by the Jt. Commissioner of Central Excise. Thus, the order dated 31st July, 2009 of the Additional Commissioner of Central Excise cannot now enter into consideration for disposing of the Respondent's 14 claims for rebate.

In the above view, the impugned order dated 31st January, 2018 passed by the Government of India in Revision is set aside. The Respondents Revision Application will be decided in accordance with law. All contentions left open".

8. In compliance of Hon'ble High Court's Order, the case was taken up for a fresh proceedings and hearing was fixed on 20.1.2020 which was attended by B.R. Mehta, Director, Shri R.V. Shetty and Shri S.R. Shetty, both Advocates on behalf of the respondent. They submitted that rebate is now admissible to them.

9. Government observes that in first round of revision proceedings, the case was decided in favour of the applicant department also on the ground that Show cause notice bearing no. V(Ch 54)3-77/Addl/Dem/ AD/2008-09 dated 20.10.2008 for Rs.33,90,576/- issued to the manufacturer M/s Rachna Art Prints Pvt. Ltd. for wrong availment of Cenvat credit on invoices issued by fake/bogus invoices of non-existent grey manufacturer, was confirmed by the Additional Commissioner of Central Excise, Surat-I vide Order in Original No 45/Adj/ADC-PSK/DEM/2009 dated 31.07.2009 and the manufacturer M/s Rachna Arts Prints Pvt. Ltd had paid Rs.27,57,221/- vide various TR-6 challans on various dates, towards such wrong



availment of Cenvat Credit and the Additional Commissioner of Central Excise, Surat-I had appropriated the said amount of Rs.27,57,221/-.

10. Government finds that as per updated records the manufacturer M/s Rachna Art Prints Pvt. Ltd. preferred appeal with Commissioner (Appeals), Surat-I against the aforesaid Order in Original No 45/Adj/ADC-PSK/DEM/2009-10 dated 31.07.2009. The Commissioner (Appeals), Surat-I vide Order In Appeal No. RKA/514-515/SRT-I/2010 dated 06.09.2010 rejected the appeal of M/s Rachna Art Prints Pvt. Ltd. Thereafter, M/s Rachna Art Prints Pvt. Ltd. preferred appeal with CESTAT, Ahmedabad, who vide Order No. A/1926/WZB/AHD/2011 & S/1432/WZB/AHD/2011 dated 17.10.2011 remanded back the case to adjudicating authority considering the amount of Rs. 27,57,221/- deposited as pre-deposit.

11. During the remand proceedings, the Joint Commissioner, CGST & Excise Commissionerate, Surat, relying on Hon'ble Gujarat High Court Judgments dated 28.09.2012 in ~~Prayagraj Dyeing & Printing Mills Pvt Ltd~~ [2013 (290) E.L.T. 61 (Guj.)] and 06.12.2012 in Kirtida Silk Mills [2014 (303) E.L.T. 530 (Guj.)], observed that

if the original document is issued even by practicing fraud, a holder in due course for valuable consideration unless shown to be a party to a fraud, cannot be proceeded with by taking aid of a larger period of limitation as indicated in Section 11A(1) of the Act. It is now settled law that Section 11A(1) is applicable when there is positive evasion of duty and mere failure to pay duty does not render larger period applicable. In the case before us, it is not the case of the Revenue that the transferees were party to any fraud and therefore, the Revenue cannot rely upon a larger period of limitation.

Joint Commissioner, CGST & Excise Commissionerate, Surat, vide Order in Original No. 12/ADJ/JC-AKS/DEM/2019-20 dated 31.05.2019 dropped the proceedings initiated against M/s Rachna Art Prints Pvt. Ltd. vide Show cause Notice bearing F.No. V(Ch 54)3-77/Addl/Dem/ AD/2008-09 dated 20.10.2008.

12. Further, Deputy Commissioner (Review) CGST & Excise Commissionerate, Surat vide letter F.No. X/704/2019/5365 dated 27.11.2019 informed this office that Order in Original No. 12/ADJ/JC-AKS/DEM/2019-20 dated 31.05.2019 in respect M/s Rachna Art Prints Pvt. Ltd. has been accepted by the department on 29.08.2019.

13. By virtue of Order in Original No. dated 31.05.2019 passed in respect of manufacturer M/s Rachna Art Prints Pvt. Ltd., the main ground of revision application that the manufacturer wrongly availed CENVAT Credit on the basis of fake/bogus invoices is no longer valid.

14. As regards issue of rejection of rebate claims on the ground that the exported goods were exempt under Notification No.30/2004-CE dated 09.07.2004, the Commissioner (Appeals) has correctly observed that in the impugned order that the manufacturer had taken credit on the inputs used in the manufacture of finished fabrics. Therefore, the duty was correctly paid as per Notification No.29/2004-CE dated 29.07.2004.

15. In view of the subsequent developments in these proceedings brought on record and discussed in foregoing paras, Government holds that rebate claims were rightly held admissible to the respondent by the Commissioner (Appeals). As such Government upholds the Order-in-Appeal No. YDB/507/RGD/2011 dated 03.05.2011 passed by the Commissioner of Central Excise (Appeals-II), Mumbai and the revision application filed by the Commissioner of Central Excise, Customs and Service Tax, Raigad is dismissed.

16. So ordered.

(SEEMA ARORA)

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

ORDER No. 285/2020-CX (WZ) /ASRA/Mumbai DATED 19.02.2020

To,

The Principal Commissioner of CGST & CX,
Belapur Commissionerate,
CGO Complex, Belapur, Navi Mumbai, Thane.

Copy to:

1. M/s Vandana Overseas, 177/11, GIDC, Pandesara, Surat-394 221
2. The Commissioner of GST & CX, (Appeals) Raigad, 5th 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.

