

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, Cuff Parade,
Mumbai- 400 005**

F NO. 195/534 & 535/11-RA /1652

Date of Issue: 03/03/20

ORDER NO. ²⁸⁶⁻²⁸⁷/2020-CX (WZ) /ASRA/MUMBAI DATED 02.03.2020 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 : M/s Presidency Exports, Surat.

Respondent : Commissioner of Central Excise, Mumbai-I.

Subject : Revision Application filed under section 35 EE of the Central Excise Act,
1944 against the Order-in-Appeal No. M-I/RKS/103/11 dated
17.03.2011 and M-I/RKS/104/11 dated 18.03.2011 passed by
Commissioner (Appeals) Central Excise, Mumbai-I.

ORDER

These revision applications are filed by the applicant M/s Presidency Exports, Surat against the Orders-in-Appeal No. M-I/RKS/103/11 dated 17.03.2011 and M-I/RKS/104/11 dated 18.03.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I with respect to Orders-in-original passed by Assistant Commissioner (Rebate), Central Excise, Mumbai-I.

2. Brief facts of the case are that the applicant, M/s Presidency Exports, Surat had filed following rebate claims in respect of duty paid on goods manufactured by M/s Jay Bharat Dyeing and Printing (P) Ltd., pertaining to Division II of Surat Commissionerate and exported through Mumbai-Port under ARE-1. The Assistant Commissioner (Rebate), Central Excise, Mumbai-I Commissionerate, sanctioned all the rebate claims on basis of his findings that as the certification was issued by the customs officers on the original and duplicate copies of the ARE-1s the goods were actually exported, and also that they were of duty paid character.

No. of Rebate claims & Date of filing these claims	Amount of Rebate Claimed	Order in Original No. and Date	Amount of Rebate Sanctioned	Amount of Rebate rejected/set aside vide Order in Appeal No. and date
1	2	3	4	5
15 Rebate claims	Rs. 10,48,218/-	182/R/2005 dated 25.10.2005	Rs. 10,48,218/-	Rs.4,30,960/- vide OIA No.M-I/RKS/103/11 dated 17.03.2011
8 Rebate Claims	Rs. 8,29,222/-	235/R/2005 dated 29.11.2005	Rs. 8,29,222/-	Rs. 8,29,222/- vide OIA No.M-I/RKS/104/11 dated 18.03.2011

3. Being aggrieved by these orders-in-original department filed appeals before Commissioner (Appeals) mainly on the ground that the range Superintendent has reported that the processor viz. M/s Jay Bharat Dyeing and Printing (P) Ltd. had fraudulently availed Cenvat credit in respect of duty paid on grey fabric on the basis of bogus/fake documents issued by non-existent weavers. Commissioner (Appeals)

decided the cases in favour of department by setting aside the Orders in Original to the extent of sanctioning of rebate amounts shown at para 5 of the Table above.

4. Being aggrieved by the impugned order-in-appeal, the applicant filed these revision applications under Section 35EE of Central Excise Act, 1944 on the following similar grounds:

- 4.1 The Commissioner(A) failed to appreciate that the Review Order and Authorization issued by Commissioner under Section 35E (2) is invalid in as much as Section 35 E (3) provides that Commissioner of Central Excise shall where ever it is possible to do so, make an order under Sub-Section 2 within a period of 6 months but not beyond a period of 1 year from the date of that decision or the order of Adjudicating Authority meaning thereby that the normal period of passing of Review Order is only 6 months and wherever it is not possible, it can be passed within a further period of 6 months. From the language of the said provisions it also flows that in the cases where the Review order is passed beyond a period of 6 months, the Commissioner has to record a reason that it was not possible to do so within a period of 6 months and therefore he passed the order within 1 year. In both the cases, Review order and authorization has been issued after 6 months from the date of that decision or the order of Adjudicating Authority by the Commissioner without recording a reason that it was not possible to do so within a period of 6 months and therefore said order was passed within 1 year. Accordingly, Commissioner (Appeals) ought to have dismissed the department's appeal as time barred.
- 4.2 The Commissioner(A) failed to appreciate that the Superintendent of Central Excise who issued the Certificate clearly certified that where ever duty payments could not be verified by him, the applicant has paid duty in respect of the ARE-Is under dispute by the department in their subject appeal and as such the Assistant Commissioner has correctly treated them as duty paid goods which have been exported. The Assistant commissioner had sanctioned the rebate claim under appeal after applying his mind to the effect that the goods under claim are of duty paid character as certified by Jurisdictional Superintendent vide his certificate and the same goods have been exported as certified by Customs on the Original and duplicate copy of ARE-1. It is wrong to say that Jurisdictional Superintendent has not issued duty payment certificate when the certificates issued gives full details as to how the said claims are of duty paid character and the more particularly Notes 'A' below each ARE-1 stating that wherever it was found that there was wrong availment

of CENVAT credit, the exporter had deposited the duty by TR-6 Challan along with interest thereon.

- 4.3 It is erroneous to say that the duty payment by TR-6 Challan is not relatable to Central Excise Invoices issued in respect of the said claims under the cover of which the goods were removed from the factory under their respective ARE-1 as certified by Range Superintendent and thereafter they were directly exported under the same ARE-1. The duplicate copy of which has also been seen to have been certified by the Customs to the effect that the same goods have been exported. If the contention of the department for not counting the payment of duty subsequent to clearance of goods is accepted and rebate claim is not allowed on such amount of duty, the collection of duty by the department becomes unauthorized and is therefore liable to be refunded to the applicant without filing of any rebate claim at all as the export goods do not attract the Central Excise duty.
- 4.4 The Commissioner (A) failed to appreciate that the department has drawn wrong conclusions and based their appeal on assumptions/presumptions alleging cover up of the so called fraud by payment of duty by the applicant in as much as they have not appreciated the fact that the applicant has paid the duty in respect of invoices which the department found bogus, although the applicant had paid full value of the goods covered by such invoices and the applicant was not aware of the bogus nature of the firm issuing such invoices. Moreover, applicant has been sanctioned the Rebate of duty paid by him albeit after the removal of goods which is perfectly legal and proper as per Rule 18 of the Central Excise Rules, 2002 and the notification is issued there under. The department cannot deny that the duty has not been paid, the rebate of which has been sanctioned by the impugned Order.
- 4.5 The Commissioner(A) (in OIA No. M-I/RKS/104/2011 dated 18.03.2011) failed to appreciate that admittedly dispute was only in respect of 18 invoices indicated in Table 'B' to the Appeal which cover claim amount of Rs.5,95,798/- but the department's Appeal sought to reject the entire claim of Rs.8,22,222/- ignoring their own conclusion that there was no objection to the claim of Rs.2,33,424/- (Rs.8,29,222/- minus Rs.5,95,798/-) covered by 19 invoices certified as genuine by the Supdt. The department's appeal to the above extent was in any case liable to be rejected.
- 4.6 The Commissioner(A) failed to appreciate that that once the goods are exported on which duty has been paid even if subsequently, the rebate will have to be sanctioned subject to verification by original authority.

Reliance is placed on the two judgments of Government of India in the case of Simplex Mills Ltd. reported in 2000 (122) ELT 613 (GOI), and Modern Process Printers, reported in 2006 (204) ELT 632 (GOI).

5. Personal hearing in this case was scheduled on 31.10.2017, 07.11.2019 and 21.11.2019. However, neither the applicant nor its Advocate on record appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing. Hence, Government proceeds to decide the case on merits on the basis of available records.

6. Government has carefully gone through the relevant case records available in case files, perused the impugned Orders-in-Original and Orders-in-Appeal. The issue involved in both these Revision Applications being common, they are taken up together and are disposed of vide this common order.

7. Government observes that the applicant has contended that review orders were not issued within a period of six months in violation to provisions contained in para 35E(3) of the Central Excise Act, 1944. In this regard, Government observes that the appellate authority in impugned orders-in-appeal has discussed in detail that though the review orders were passed beyond six months, the same were passed within one year period as provided in the said Section 35E(3). The appellate authority has discussed in detail this aspect and logically reached to a conclusion that the impugned review orders passed by the Commissioner of Central Excise, Mumbai-I are within time period as provided in the statute. Government does not find any infirmity in order of Commissioner (Appeals) in this aspect.

8. Government notes that the applicant as merchant exporters purchased/procured their export goods (i.e. processed fabrics) from different manufacturers. There is no dispute to the factual details on record for the completion of exports and filing of claims of rebate in terms of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004. However, it was reported that the processor viz. M/s Jay Bharat Dyeing and Printing (P) Ltd. who supplied the impugned exported goods, had fraudulently availed Cenvat credit in respect of duty paid on grey fabric on the basis of bogus/fake documents issued by non-existent weavers.

9. Government further notes that in both the cases the original authority while sanctioning the rebate claims observed that the goods are of "duty paid character" as evident from the duty paying Certificates issued by the jurisdictional Superintendents of Central Excise. However, Government further notes that in each duty paying certificate the Range Supdt. certified that for the invoices issued by grey weavers found Fake / bogus/nonexistent, the applicant (M/s Presidency Exports) has debited the wrongly availed Cenvat Credit vide TR-6 Challan No.01/05-06 dtd.05.09.2005 alongwith applicable interest thereon. The ARE-1 wise details of bogus credit availed and subsequently debited vide TR-6 Challan No.01/05-06 dtd.05.09.2005 by the applicant in respect of Order in Original No. 182/R/2005 dated 25.10.2005 is as under:

Table -A

ARE-1 No. & date	Total Excise duty as per invoices	Wrongly availed Cenvat Credit on account of Fake / bogus/ nonexistent weavers which was paid by the applicant vide TR-6 Challan No.01/05-06 dtd.05.09.2005	Duty Paying Certificate No. & date
353/04-05 dated 11.11.2004	Rs.1,99,646/-	Rs.1,93,571/-	AR-III/DPC/2005-06/261 dated 13.10.2005
360/04-05 dated 19.11.2004	Rs. 70,483/-	Rs. 61,094/-	--- do ---
362/04-05 dated 24.11.2004	Rs.1,60,831/-	Rs. 1,45,433/-	--- do ---

10. Similarly, The ARE-1 wise details of bogus credit availed and subsequently debited vide TR-6 Challan No.02/05-06 dtd.31.10.2005 by the applicant in respect of Order in Original No. 235/R/2005 dated 29.11.2005 is as under:

Table-B

ARE-1 No. & date	Total Excise duty as per invoices	Wrongly availed Cenvat Credit on account of Fake / bogus/ nonexistent weavers which was paid by the applicant vide TR-6 Challan No.01/05-06 dtd.05.09.2005	Duty Paying Certificate No. & date
236/04-05 dated 16.08.2004	Rs.1,07,582/-	Rs. 89,644/-	AR-III/DPC/2005-06/316 dated 17.11.2005
253/04-05 dated 06.09.2004	Rs. 40,617/-	Rs. 42,567/-	AR-III/DPC/2005-06/317 dated 17.11.2005

254/04-05 dated 06.09.2004	Rs. 57,136/-	Rs. 42,571/-	AR-III/DPC/2005-06/318 dated 17.11.2005
275/04-05 dated 20.09.2004	Rs. 39,663/-	Rs. 41,512/-	AR-III/DPC/2005-06/319 dated 17.11.2005
276/04-05 dated 21.09.2004	Rs. 39,535/-	Rs. 42,085/-	AR-III/DPC/2005-06/320 dated 17.11.2005
315/04-05 dated 20.10.2004	Rs. 1,40,985/-	Rs. 1,21,324/-	AR-III/DPC/2005-06/321 dated 17.11.2005
346/04-05 dated 08.11.2004	Rs. 2,09,862/-	Rs. 72,545/-	AR-III/DPC/2005-06/315 dated 17.11.2005
347/04-05 dated 09.11.2004	Rs. 1,93,842/-	Rs. 1,43,550/-	AR-III/DPC/2005-06/322 dated 17.11.2005

From the Table –A and 'B' above, Government observes that substantial amount of duty shown to have been paid vide invoices by debiting Cenvat account at the time of exports had been accumulated on the basis of forged and bogus documents.

11. Government observes that since the suppliers of grey fabrics did not exist the transactions shown as supplier of grey fabrics on central excise invoices are 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.

12. In similar circumstances, in case of M/s. Multiple exports Pvt. Ltd., Government vide GOI order No 668-686/11-Cx dt. 01-06-2011 had upheld the rejection of rebate claim by lower authorities. Further, 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 applicant 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 fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."

13. 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 as 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 therefrom" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

14. Government therefore, observes that at no time there was a sufficient balance in Cenvat Credit account of the applicant taking into account the wrongly availed Cenvat Credit on the basis of forged and bogus documents (as detailed at Table A and B supra) and thus the Commissioner (Appeals) has rightly allowed department's Appeal which sought to reject the entire rebate claim of Rs.8,22,222/- in respect of Order in Original No. 235/R/2005 dated 29.11.2005 and rebate claim Rs.4,30,960/- in respect of Order in Original No. 182/R/2005 dated 25.10.2005. Government is also in agreement with the findings of the Commissioner (Appeals) at para-14 to-16 of the impugned orders that the ratio of the case laws relied upon by the applicant, viz. M/s Simplex Mills Limited and M/s Modern Process Printers are not applicable to the facts of these cases.

15. Now coming to the issue, whether subsequent payment of duty by the applicant for wrongly availed bogus Cenvat Credit, vide TR-6 Challans No.01/05-06 dtd.05.09.2005 and 02/05-06 dtd.31.10.2005 can be considered as duty payment for exports effected vide ARE-1s detailed at Table A and B supra, Government observes that as per provisions contained in para 1.1(1) of Part-I, Chapter 8 of CBEC's Excise Manual of Supplementary Instructions the excisable goods shall be exported after

payment of duty. The condition of "payment of duty" is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under Rule 10 of Central Excise Rules, 2002 whereas as per Rule 4(1) of the 'Rules' "every person who produces or manufactures any excisable goods shall pay the duty leviable on such goods in the manner provided in Rule 8 or under any other law". This rule provides that every person engaged in the manufacture of excisable goods, can remove the goods from his factory only after payment of duty leviable on such goods. With effect from 01.04.2003 the assessee was required to pay duty for a particular month by the 5th of the next month. However, duty for the month of March had to be paid by the 31st March. Rule 10 of the said Rules required maintenance of Daily Stock Account by giving complete details of goods produced and manufactured including amount of duty actually paid. As per Rule 8 of Central Excise Rules, 2002 the amounts involved for such exports become entitled for rebate claim when the mandatory provisions of Rule 8 requiring payment to be made by 5th of next month is complied to the satisfaction of the proper officer.

16. Government in this regards relies on GOI Order No. 1227/2011-CX dated 20.09.2011 (2012 (281) E.L.T. 747 (G.O.I.)) in RE: Marim International. In this case, while rejecting the Revision Application and upholding Order in Appeal rejecting the rebate claim on account of late payment of Central Excise Duty in respect of goods cleared for export, GOI observed as under :-

10. *Government further observes that sub rule 3 and 3(A) of Rule 8 provides for payment of duty, alongwith applicable interest if the assessee failed to pay the amount of duty by due date. Government notes that provision for claim of Rebate is governed by Rule 18, which requires payment of duty at the time of export. Provision contained in Rule 8 does not absolve the assessee from substantial conditions of payment of duty for claim of rebate under Rule 18 of Central Excise Rules, 2002.*

GOI has taken a similar view in its Order No. 501-503/13-CX dated 31-5-2013 in the case of M/s Sandhar Automotives.

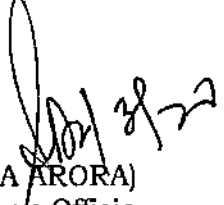
17. In view of the foregoing discussion and relying on case laws discussed supra, Government holds that the applicant is not eligible for rebate of duty paid vide TR-6

Challan No.01/05-06 dtd.05.09.2005 in respect of goods cleared for export in the month of November, 2004 (Table A supra) and vide TR-6 Challan 02/05-06 dtd.31.10.2005 in respect of goods cleared for export in the month of August 2004 to November, 2004 (Table B supra) for not depositing the duty within the specified time stipulated under Rule 8 of the Central Excise Rules, 2002.

18. In view of the foregoing discussion, Government upholds Orders-in-Appeal No. M-I/RKS/103/11 dated 17.03.2011 and M-I/RKS/104/11 dated 18.03.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I.

19. The Revision Applications are dismissed being devoid of merits.

20. So, ordered.


(SEEMA ARORA)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

286-287
ORDER No. /2020-CX (WZ) /ASRA/Mumbai

To,
M/s. Presidency Export.
B-22, Basement, Rushabh Textile Tower,
Ring Road, Surat-395002, Gujarat.

Copy to:

1. Commissioner of CGST & CX, Mumbai South, 13th Floor, Air India Building, Nariman Point, Mumbai 400 021.
2. The Commissioner CGST & CX (Appeals-I), 9th Floor, Piramal Chambers, Jijibhouy Lane, Lalbaug, Parel, Mumbai 400 012.
3. The Assistant Commissioner of CGST & CX, Divison -II, Mumbai South, 15th Floor, Air India Building, Nariman Point, Mumbai 400 021.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.