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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

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F.No.195/666/2011-RA

Date of Issue:

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ORDER NO. 288 /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 Maheshwari Impex, Surat.

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Respondent :- The Assistant Commissioner, Central Excise & Customs,  
Div-IV, Surat-I

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. RKA/658/SRT-I/2010 dated 24.12.2010 passed by the Commissioner(Appeals), Central Excise & Customs, Surat-I.

## ORDER

This Revision Application is filed by M/s Maheshwari Impex, M-36, Metro Tower, Ring Road, Surat - 395 002(hereinafter referred to as "Applicant") against the Order-in-Appeal No. RKA/658/SRT-I/2010-dated 24.12.2010 passed by the Commissioner(Appeals), Central Excise & Customs, Surat-I

2. The issue in brief is that the Applicant, had obtained Central Excise Registration under Rule 12B of the Central Excise Rules, 2002 (as it existed in the period May-June 2004). The Applicant had purportedly purchased processed fabrics under invoices showing duty payment from five persons viz. M/s Harikrishna Enterprises, M/s Amar Enterprises, M/s Laxmi Textiles, M/s Pooja Fashion and M/s Salasar Impex. The duty credit reflected on these invoices were availed as credit by the Applicant. The Applicant then prepared ARE-1 and the processed fabrics were purportedly exported on payment of duty through two merchant exporters viz. M/s Kahkashan Exports and M/s Glance Overseas. The duty was paid out of the credit availed on the invoices of the five suppliers. Based on the ARE-1s countersigned by the Customs Officers and NOC from the merchant exports viz.. M/s Kahkashan Exports and M/s Glance Overseas, the Applicant had filed the 16 rebate claims total amounting to Rs. 48,79,979/- . By the time rebate claims would be processed, a large scale scam was unearthed in Surat-I Commissionerate regarding fraudulent rebate claims where the exporter had submitted bogus shipping bills, ARE-1s and other documents. Investigation revealed that the five suppliers, who purportedly issued the invoices of sale to the Applicant and based on which the Applicant had taken credit, did not exist and are fictitious persons. In a statement recorded on 16.09.2005, Shri Mahesh V Khator, Proprietor of M/s Maheshwari Impex i.e. Applicant admitted that the rebate claim was based on fake credit and paper transactions. The Applicant was issued a Show Cause Notice dated 05.01.2006. The Assistant Commissioner, Central

Excise, Division-IV, Surat-I vide Order-in-Original No. STR-I/ADJ/32/R/2008 dated 17.04.2008 rejected the rebate claim amounting to Rs.48,79,979/- under Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944. Aggrieved, the Applicant then filed appeal with Commissioner(Appeals), Central Excise & Customs, Surat-I. The Commissioner(Appeals) vide Order-in-Appeal No. RKA/658/SRT-I/2010 dated 24.12.2010 rejected the Applicant's appeal.

3. Aggrieved, the Applicant filed the current Revision Application on the grounds that the Applicant had purchased the processed grey fabrics i.e. MMF(P) from five firms viz. M/s Harikrishna Enterprises, M/s Amar Enterprises, M/s Laxmi Textiles, M/s Pooja Fashion and M/s Salasar-Impex and had supplied the processed grey fabrics to the Merchant Exporters viz. M/s Kakhshan Exports and M/s Glance Overseas along with ARE-Is by issuing Central Excise invoices and paid the duty from accumulated amount of Cenvat Excise. The two merchant exporters issued NOC and permitted the Applicant to file the rebate claims and the Applicant had made payment of total amount inclusive of Central Excise duty which is legal as there is no one to one co-relation of Cenvat credit required, when the Applicant paid duty of Rs. 48,79,979/- from the accumulated amount of Cenvat credit of Rs. 1,22,13,105/- as held by the Hon'ble Supreme Court in the case of CE Pune Vs Dai ichi Karkaria Ltd [1999(112) ELT 353 (SC)]. Thus the rebate claims filed by the Applicant on the export goods received by the Merchant Exporters on the basis of invoices issued by the Applicant are valid and legal in the eye of law. In this they relied on the GOI Order No. 304-307/07 dated 18.05.2007 in the case of M/s Shyam International, Mumbai and GOI Order No. 315/07 dated 18.05.2007 in the case of M/s Krishna Exports, Surat. Hence, the ratio of the above judgment should squarely applicable to their present case. The Applicant had availed credit on the basis of five suppliers who were in existence during the material time and had issued valid Central Excise Invoices for the processed fabrics supplied to them and in the present all the five suppliers have been reported fake/bogus/non-

existent vide Alert Circulars. Alert Circular cannot be the sole ground to declare any unit fake/bogus because it has been prepared without any bias, hapazetely and it had no legal force, backed by any solid investigations. The persons who had been declared fake/bogus/non-existent, in alert circular, was later on declared by the Department in existence at material time. Thus the above supplier of finished fabrics were genuine and in existent during the material time. The export documents i.e. ARE-1s, Shipping Bills, Bills of Lading, Mate Receipt, etc. were duly signed and sealed by the Customs Authority and all the documents were submitted to the Assistant Commissioner, Central Excise, Surat-I. The department had not brought anything contrary on record that the Applicant had received the processed grey fabrics from other then the said suppliers. Department had failed to prove the onus, while lies on department and it should be proved beyond the doubt, with sufficient documentary. Hence the legal claim of the Applicant cannot be denied, when the department had failed to prove that the export of finished goods had actually not taken place. The Applicant vide their RTI application dated 15.10.2010 had asked information from the department regarding any issuance of show cause notice for wrong availment of Cenvat credit and the Deputy Commissioner, Central Excise, Div-IV, Surat-I vide letter F.No. IV/RTI/Misc./10-11 dated 30.11.2010 addressed to Shri Mahesh Khator reported that *"In this connection, it is to report that no Show Cause Notice to M/s Maheshwari Impex has been issued by this office for wrong availment of Cenvat credit."* In view of this the order rejection rebate claims is not sustainable. ~~The Applicant prayed that the rebate of Rs. 48,79,979/~~ be allowed along with interest.

4. A personal hearing in the case was held on 27.11.2019 which was attended by Shri Mukund Chouhan, Advocate on behalf of the Applicant. The Applicant reiterated the grounds made in their revision application and submitted that there is no one to one co-relation and all the payments had been done by cheques hence there is no mala fide.

5. 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.

6. Government notes that during the relevant time, a special scheme for Job work in Textiles and Textiles Articles was in vogue w.e.f. 01.03.2003 which permitted grant of Central Excise registration without verification. There was amendment in Central Excise Rules, 2002 wherein vide Notification No. 24/2003-CE(NT) dated 25.03.2003 Rule 12B - Job work in textiles and textile articles was inserted. The said Rule 12B of the Central Excise Rules, 2002 was then omitted vide Notification No. 11/2004-CE(NT) dated 09.07.2004. Government finds that the Rule 12B for Special scheme ~~for Job work in Textiles and Textiles Articles~~ was only for a small period i.e. 01.04.2003 to 09.07.2004.

7. Government observes that vide the Alert Circulars issued by the Surat-1 Commissionerate vide F.No. IV/12-HPIU-III/9/04-05 dated 03.05.2005 and 22.09.2005 and Alert Circular No. 01/2005 issued by Thane-I Commissionerate vide F.No. V/PI-Th-I/I/12-05/05 dated 03.05.2005 the four firms viz M/s Harikrishna Enterprises, M/s Amar Enterprises, M/s Laxmi Textiles and M/s Pooja Fashion were declared non-existing. Further, in respect of M/s Harikrishna Enterprises, M/s Amar Enterprises, M/s Laxmi Textiles, M/s Pooja Fashion and M/s Salasar Impex.- Annexure-D had been sent and the Assistant Commissioner ~~Division-II, Surat-I~~ vide letter dated 20.09.2005 reported the grey fabrics supplied to M/s Salasar Impex by M/s Glory Fashion and M/s Shraddha Textile, both weaver have been reported fake/bogus/non-existent. Further, in a statement recorded on 16.09.2005, Shri Mahesh Khator, Proprietor of M/s Maheshwari Impex had admitted that the rebate claim was based on irregular Cenvat credit passed on by the above five suppliers. Government finds that on admitting that the rebate claim was based on irregular Cenvat credit passed on by the said five suppliers, the Applicant should have

immediately reversed the said Cenvat credit with interest which they did not.

8. Government observes that the contention of the Commissioner (Appeals) for rejecting the appeals is based on the facts that the duty was paid on the exported goods through non-existent firms / bogus credit which amounted to non-payment.

*"7. ....The plea of the appellant lacks logic and rationality. The fact that proceedings for recovery of wrong credit is not initiated strengthen the departmental case for denial of rebate claim. The ultimate objective of fraudulent credit was its encashment by way of rebate. By rejecting the claim of rebate, the authorities have treated the fraudulent credit as non est and payment of duty of such credit as void ab initio. No doubt parallel action for recovery of wrong credit was well within frame work of law but that in no way helps the appellant to obtain rebate by using fraudulent means. Fraud vitiates all transactions. The law sets itself against fraud to the extend of breaking through every rule, sacrificing every maxim getting rid of every ground of opposition which may be presented so as to prevent it from succeeding. What the appellant has failed to realize is that he is the person who has taken credit on fraudulent documents knowingly and that he himself is the claimant of rebate of duty paid out of such fraudulent credit. This fact distinguishes it from case of law of Shree Shyam International cited by the appellant. The Order of the GOI does not have any bearing on the case in hand."*

Government is in agreement with the findings of the Commissioner(Appeals) as the facts of the case involves fraudulent availment of Cenvat credit on the basis of forged documents and hence the question of refund does not arise.

9. 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."*

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 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."*

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. In view of above, Government finds no infirmity in the impugned the Order-in-Appeal No. RKA/658/SRT-I/2010 dated 24.12.2010 passed by the Commissioner(Appeals), Central Excise & Customs, Surat-I and upholds the same as legal and proper.

13. The Revision Application filed by the Applicant is dismissed being devoid of merit.

14. So, ordered.

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

ORDER No. 288/2020-CX (WZ)/ASRA/Mumbai DATED 02.03.2020.

To,  
M/s Maheshwari Impex,  
M-36, Metro Tower,  
Ring Road,  
Surat - 395 002.

Copy to:

1. The Commissioner of GST & Central Excise, New Central Excise Building, Chowk Bazar, Surat - 395 001.
2. The Assistant Commissioner, Central Excise & Customs, Div-IV, Surat-I
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.