

**REGISTERED
SPEED POST**



F.No. 195/277-279/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 16/01/13

ORDER NO. 31-33/13-Cx DATED 15-01-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : REVISION APPLICATION FILED,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE,
1944 AGAINST THE ORDER-IN-APPEAL No.
44-46/CE/APPL/LDH/2011 dated 24-02-2011
passed by Commissioner of Central Excise,
(Appeals), Chandigarh.

APPLICANT : M/s Braun Textiles Processors,
Ludhiana-(PB).

RESPONDENT : Commissioner of Central Excise, Commissionerate,
Chandigarh-II.

ORDER

These revision applications are filed by M/s Braun Textiles Processors, Ludhiana-(PB) against the Order-in-Appeal No. 44-46/CE/APPL/LDH/2011 dated 24-02-2011 passed by Commissioner of Central Excise, (Appeals), Chandigarh-II.

2. Brief facts of the case are that the applicant is engaged in the manufacture of excisable goods falling under chapter 54,61 & 62 of the First Schedule to the Central Excise Tariff Act, 1986 and are availing the facility of Cenvat Credit Rules, 2002. They cleared excisable goods for export under claim for rebate of duty under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dt. 06-09-2004 either in their own account or through merchant exporter, directly from the factory under self sealing and self certification procedure and filed rebate claim for Rs. 1,92,735/- for goods exported vide ARE-I. It was observed that the applicant having address at 851, Industrial Area-A, Ludhiana had paid duty on export goods from the cenvat credit taken against the purchase invoices issued by M/s Braun Textiles Processors having address at 863, Industrial Area-A, Ludhiana, a registered dealer, who have passed on the cenvat credit against the invoice issued by M/s Biren Textiles, Surat. M/s Biren Textiles, Surat which had been declared as fake/non-existent/bogus unit vide Alert Circular issued by the Commissioner of Central Excise & Customs, Surat issued vide C No. IV/12-HIPU-III/09/04-05/Pt. VII dt. 30-12-2005, as such the invoices issued by M/s Biren Textiles, Surat were invalid for taking cenvat credit. It was, thus, observed and alleged that on cenvat credit was obtained on the strength of bogus invoices, therefore, the credit which was utilized for discharge of duty was not valid. Accordingly, the adjudicating authority after issuing show cause notice, rejected the rebate claim of the applicants vide impugned Order-in-Original.

3. Being aggrieved by the impugned Orders-in-Original, applicant filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Order-in-Appeal No. 44-46/CE/APPL/LDH/2011 dated 24-02-2011 issued under F. No. 440/APPL/LDH/2010/855 dt. 15-03-2011 is not just, legal and proper on the ground that the applicant had obtained Central Excise Registration Certificate No. AAEFB314JXM001 for manufacture of knitted/woven garments, knitted cloth, woven cloth, textiles & textiles articles under chapter 50 to 63 of the schedule to the Central Excise Tariff Act, 1985.

4.2 In view of above, it is prayed that:-

- i) Impugned order be set aside and consequential relief thereto be allowed.
- ii) Any other relief which may be deemed fit in the facts and circumstances of the case may be allowed.

5. Personal hearing was scheduled in this case on 07-08-2012, 09-10-2012 & 06-12-2012. Nobody attended the hearing. Hence Government proceeds to decide the case on merits.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. Government observed that the applicant's rebate claims was rejected by the original authority on the grounds that the applicant paid duty from cenvat credit, which was obtained fraudulently Commissioner (Appeals) uphold impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the applicant is relying upon one only fact that M/s Biren Textiles, Surat who passed on cenvat credit availed by the fraudulent means to the applicant, has been allotted Central Excise Registration Certificate and

hence it cannot be held that he availed cenvat wrongly. Government finds that the applicant having address at 851, Industrial Area-A, Ludhiana had paid duty on export goods from the cenvat credit taken against the purchase invoices issued by M/s Braun Textiles Processors having address at 863, Industrial Area-A, Ludhiana, a registered dealer, who have passed on the cenvat credit against the invoice issued by M/s Biren Textiles, Surat. M/s Biren Textiles, Surat was declared as fake/bogus unit vide an alert circular issued by CCE, Surat vide circular No. IV/12-HIPU-III/09/04-05/Pt.-VII dt. 30-12-2005. The duty was paid from said fraudulently availed cenvat credit on the exported good. Since the supplier unit at Surat was not in existence and therefore it cannot be accepted that duty paid goods were actually received by applicant. Applicant has never claimed that M/s Biren Textiles, Surat named unit was a genuine manufacturer. As such, duty paid nature of exported goods cannot be held as proved. Unless duty paid nature of exported goods is not proved, the rebate cannot be granted.

9. Government observes that the Supreme Court in case of CC, vs. Candid Enterprise, 2001 (150) ELT 404 (SC) held that fraud nullifies everything. Applicant has fraudulently availed cenvat credit and made wrong/incorrect statement in each of export document wherein he stated as under:-

" I/We hereby declare that the above particulars are true and correctly stated."

This attracts the Hon'ble Supreme Court judgment in case of Eagle Flask Industries Ltd. 2004 (171) ELT 296 (SC) that such disqualification and non-observance of procedural declarations are not an empty formality but has the result in denial of consequential benefit. In this case applicant cannot claim that he was not party to said fraud since he has shown goods received from a non existing supplier.

9.1 Apex Court judgment in the case of Omkar Overseas L.td. [2003 (156) ELT 167 (SC)] is relevant to decide the issue at hand. The Hon'ble court has in unambiguous terms held that rebate should be denied in cases of fraud.

9.2 In Sheela Dyeing & Printing Mills (P) Ltd. [2007 (219) Elt 348 (Tri.-Mum)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgment has been upheld by the Hon'ble High Court of Gujrat. In another judgment in the case of Chintan Processors [2008 (232) ELT 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 non- existent, 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 this case it has been found that supplier unit was non-existent and the cenvat credit was availed fraudulently on the basis of invoices of such non-existent supplier. As such, the cenvat credit so obtained has to be treated as null and void and hence payment of duty from such cenvat credit cannot be treated payment of duty. Unless and until duty paid character of exported goods is proved, the rebate cannot be granted. Since in this case, the applicant was in knowledge of fraudulent availment of Cenvat Credit, he claimed the rebate fraudulently to defraud the Government exchequer.

11. 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. As such, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

12. Revision applications are thus rejected being devoid of merit.

13. So, Ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Braun Textiles Processors,
863, Industrial Area-A,
Ludhiana-(PB).

(भागवत शर्मा) (Bhawat Sharma)
सहायक आयुक्त (Assistant Commissioner)
C.B.E.C.-O (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)

Order No.31-33/13-Cx dated 15-01-2013

Copy to:

1. The Commissioner of Central Excise, Central Excise House, F-Block, Rishi Nagar, Ludhiana-141001.
2. The Commissioner of Central Excise (Appeals), Central Excise House, F-Block, Rishi Nagar, Ludhiana-141001.

✓ 3. PS to JS (RA)

4. Guard File.

5. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)