

F.No. 195/542/16-RA, F.No. 195/05/17-RA,  
F.No. 195/02-03/17-RA, F.No. 195/04/17-RA, /5749  
F.No.195/01/17-RA, F.No.195/237/17-RA,  
F.No.195/238/17-RA

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SPEED POST



GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
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Mumbai- 400 005

Date of Issue: 06/10/2021

ORDER NO: 327-334 /2021/CX(WZ)/ASRA/MUMBAI DATED 29.9.2021, OF  
THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE  
ACT, 1944.

Subject : Revision Application filed, under Section 35EE of Central Excise Act,  
1944 against the following Order-in-Appeal passed by Commissioner  
(Appeal-II), Central, Excise, Customs, Service Tax, Vadodara.

Sl.No.	Revision Application No.	Applicant	Respondent	Order-in-Appeal No. & Date
1	195/542/16-RA	M/s. Aakanksha Overseas., Surat	Commr(Appeal-II), Central Excise, Customs, Service Tax, Vadodara	CCESA-VAD(APP-II)VK- 243/2016-17 dt. 4.09.2016
2	195/05/17-RA			CCESA-VAD(APP-II)VK- 335/2016-17 dt. 07.11.2016
3 & 4	195/02-03/17-RA	M/s Vandana Overseas, Surat	Commr(Appeal-II), Central Excise, Customs, Service Tax, Vadodara	CCESA-VAD(APP-II)VK-341 & 342/2016-17 dt. 07.11.2016
5	195/04/17-RA			CCESA-VAD(APP-II)VK- 348/2016-17 dt. 17.11.2016
6	195/01/17-RA	M/s Rachna Art Prints Pvt Ltd., Surat	Commr(Appeal-II), Central Excise, Customs, Service Tax, Vadodara	CCESA-VAD(APP-II)VK- 345/2016-17 dt. 07.11.2016.
7	195/237/17-RA		Dy. Commr., C.Ex., Dn- III, Surat-I	CCESA-VAD(APP-II)VK- 25/2017-18 dt. 15.05.2017
8	195/238/17-RA		Dy. Commr., C.Ex., Dn- III, Surat-I	CCESA-VAD(APP-II)VK- 26/2017-18 dt. 15.05.2017

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ORDER

The eight revision applications have been filed by M/s Aakanksha Overseas., M/s Vandana Overseas, and M/s Rachna Art Prints Pvt Ltd., (all hereinafter referred to as "the Applicants") against the Order-in-Appeal passed by Commissioner(Appeal-II), Central Excise, Customs, Service Tax, Vadodara. The details are as given below:

Sl.No.	Revision Application No.	Applicant	Respondent	Order-in-Appeal No. & Date
1	195/542/16-RA	M/s. Aakanksha Overseas., 177/1, GIDC, Pandesara, Surat-394 221	Commr(Appeal-II), Central Excise, Customs, Service Tax, Vadodara	CCESA-VAD(APP-II)VK-243/2016-17 dt. 4.09.2016
2	195/05/17-RA			CCESA-VAD(APP-II)VK-335/2016-17 dt. 07.11.2016
3 & 4	195/02-03/17-RA	M/s Vandana Overseas, Plot No. 410/B ( Plot No. 177/1), GIDC, Pandesara, Surat-394 221	Commr(Appeal-II), Central Excise, Customs, Service Tax, Vadodara	CCESA-VAD(APP-II)VK-341 & 342/2016-17 dt. 07.11.2016
5	195/04/17-RA	M/s Rachna Art Prints Pvt Ltd., 234/1-B, GIDC, Pandesara, Surat-394 221	Commr(Appeal-II), Central Excise, Customs, Service Tax, Vadodara	CCESA-VAD(APP-II)VK-348/2016-17 dt. 17.11.2016
6	195/01/17-RA			CCESA-VAD(APP-II)VK-345/2016-17 dt. 07.11.2016.
7	195/237/17-RA		Dy.Commr., C.Ex., Dn-III, Surat-I	CCESA-VAD(APP-II)VK-25/2017-18 dt. 15.05.2017
8	195/238/17-RA		Dy.Commr., C.Ex., Dn-III, Surat-I	CCESA-VAD(APP-II)VK-26/2017-18 dt. 15.05.2017

2. The case in brief is that during the period 2003-04 a large scale scam was unearthed in Surat-I Commissionerate regarding fraudulent rebate claims. During this period, the textile exporters had submitted bogus Shipping Bills, ARE-1 and other related documents in respect of fraudulently claims. Subsequently, the Directorate General of Central Excise

Intelligence (DGCEI) also initiated investigation in respect of evasion of Central Excise duty by the exporters of processed fabrics/made ups/scarves by way of fraudulent rebate. Alert Circular F.No. IV/12-HPIU-III/9/04-05 Pt.IV dated 03.05.2006 and F.No. IV/12-HPIU-III/9/04-05 Pt.V dated 22.05.2006 issued by the Surat-1 Commissionerate and the DGCEI Vadodara, vide letter F.No. INV/DGCEI/BRU/31/08 dated 11.02.2009 issued several guidelines to the Surat-I, Surat-II Commissionerates and Maritime Commissioner, Mumbai regarding verification of rebate claims sanction. In the current 08 cases, the Applicants, Merchant Exporters/manufacturers had exported various textile goods in the year 2007-08 on payment of Central Excise duty through Cenvat credit and filed rebate claims under Rule 18 of Central Excise Rules 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004.

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2.1 The Applicant M/s Aakanksha Overseas., merchant exporter had got processed/manufactured the exported goods from M/s Mullaji Prints Pvt. Ltd., Surat. On scrutiny of the two rebate claims and documents/records submitted by the Applicant, some noticeable and conspicuous deficiencies were noticed in respect of the claims filed which are as follows:

- (a) Chapter sub head and description of goods was different in Excise Invoice from that as mentioned in related ARE-1s/Shipping Bills filed;
- (b) Duty verification certificate evidencing duty payment from the jurisdictional authority was not furnished.

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- (c) M/s Mullaji Prints Pvt. Ltd., Surat., manufacturer and Shri Fazalbhai Z Banarsi, Director of M/s Mullaji Prints Pvt. Ltd., Surat were issued Show Cause Notice dated 23.04.2009 for wrong availment and utilization of Cenvat credit amounting to Rs. 29,959/- on the basis of invoice issued by fake/bogus supplier of grey fabrics namely M/s Bhavesh Rameshcandra, Surat who was declared fake vide Alert Circular dated 03.05.2005.
- (d) The Applicant had shown purchase of grey fabrics from various grey manufacturer viz M/s Priyadarshini Fashions Pvt. Ltd., M/s Hariom Silk Industries, M/s Hanuman Textiles, M/s Hardik Textiles, M/s Agarwal Twisting Works, M/s Shri Krishna & Ram Industries, etc. The Applicant had availed Cenvat credit on the basis of invoices issued by the said grey manufactures. The investigation were conducted by DGCEI in the case of M/s Deepak Processors who had shown purchase of fabrics from M/s Hanuman Textiles wherein it was revealed that M/s Hanuman Textiles was a fake bogus firm.

Hence the Applicant was issued Show Cause Notice dated 11.03.2014. The adjudication authority, Assistant Commissioner of Central Excise, Division-III, Surat-I vide Order-in-Original SRT-V/ADJ-910 to 911/2014-R dated 02.01.2015 rejected the rebate of Rs. 81,924/-. Aggrieved, the Applicant filed appeal with the Commissioner(Appeals), who vide Order-in-Appeal No. CCESA-VAD(APP-II)VK-243/2016-17 dated 04.09.2016 rejected the appeal.

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2.2 The Applicants M/s Aakanksha Overseas and M/s Vandana Overseas, Surat merchant exporters had procured the exported goods from M/s Rachna Art Prints Pvt. Ltd., Surat, manufacturer/processor and grey

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fabrics was supplied by M/s Pepco Fabrics Pvt Ltd. and M/s Ram Tex Fab, Surat. On scrutiny of the rebate claims and documents/records submitted by the Applicant, some noticeable and conspicuous deficiencies were noticed in respect of the claims filed which are as follows:

- (a) The DGCEI, Vadodara had carried out investigation against M/s Pepco Fabrics Pvt Ltd. for mis-use of Cenvat Credit and the department vide letter dated 24.12.2014 had requested the DGCEI Vadodar regarding the outcome of the investigation in respect of M/s Pepco Fabrics Pvt. Ltd.
- (b) The Superintendent, Range-V, Division-III, Surat-I vide letter dated 21.01.2015 submitted verification of Annexure-D that M/s Ram Tex Fab is not in existence for a long period of time as no reply in this matter was received from them in spite of so many reminders and panchnama issued/drawn by the department. Hence verification of Annexure-D i.e. genuineness of duty payment at yarn stage could not be done and that another unit is working at the same address;
- (c) An investigation was carried out by the Directorate of Revenue Intelligent (DRI) which revealed that M/s Ram Tex Fab, Surat and other had fraudulently shown procurement of grey fabrics from grey manufacturers, got them processed through processors and has shown exports under claim of DEPB licence, Rebate, etc. The Additional Director of General, DRI, Ahmedabad had issued show cause dated 05.11.2008 to M/s Ayush Exports, Surat and M/s Ram Tex Fab, Surat which was adjudicated by the Commissioner of Central Excise, Customs & Service Tax vide Order-in-Original No. 23/MP/2012-13 dated 05.11.2008 and confirmed the demand of Customs duty amounting to Rs. 12,63,534/- and also imposed penalty

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equivalent to the credit utilized under Section 114A of Customs Act, 1962;

- (d) Chapter sub head and description of goods was not mentioned in Excise Invoice and in related ARE-1s filed;
- (e) Duty verification certificate evidencing duty payment from the jurisdictional authority was not furnished;
- (f) RG-23A Part-I & II, PLA and BRC was not submitted;
- (g) No document submitted to prove that the grey supplier is genuine and duty is paid on the grey fabrics which is processed by the processor and ultimately exported;
- (h) Copy of stock Register showing the receipt of grey fabrics from the grey suppliers was not produced.
- (i) SCN dated 10.05.2010 had been issued by DGCEI to M/s Rachna Art Prints, Surat for involvement of fake transaction of grey fabrics;
- (j) One more SCN F.No. V(ch.54)3-87/ADC/DEM/2008 dated 16.01.2009 for Rs. 49,22,193/- was issued for availment of Cenvat credit on fake/bogus invoice and the same was adjudicated by the Addl. Commissioner of Central Excise, Surat-I vide Order-in-Original No.10/ADJ/ADC-PKK/D/2010 dated 07.07.2010 and disallowed the Cenvat credit of Rs. 49,22,193/-.
- (k) The Addl. Commissioner of Central Excise, Surat-I issued SCN dated 20.10.2008 for Rs. 33,90,576/- for taking and utilizing of Cenvat credit on the strength of inadmissible invoices and the invoices issued by the fake/bogus supplier/manufacturers.

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In view of the above, it appears that in past M/s Rachna Art Prints Pvt. Ltd., Surat, manufacturer/processor were involved for taking and utilizing the inadmissible Cenvat credit. Hence, the Applicants were issued show cause notices dated 25.02.2015 and 28.08.2015 respectively. The adjudication authority, Deputy Commissioner of Central Excise, Division-III, Surat-I vide Order-in-Original SRT-III/242 to 244/2015-16/R dated 08.10.2015 and SRT-III/282 to 283/2015-16/R dated 29.10.2015 rejected the rebate of Rs. 1,43,566/- and Rs. 4,27,689/- respectively. Aggrieved, the Applicants filed appeals with the Commissioner(Appeals). The Commissioner(Appeals) vide Order-in-Appeal Nos. CCESA-VAD(APP-II)VK-335/2016-17 dated 07.11.2016 and CCESA-VAD(APP-II)VK-341 & 342/2016-17 dated 07.11.2016 rejected their appeals as the Applicants failed to submit the required details and documents to establish the genuineness of their rebate even after given ample opportunities and time to submit the same.

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2.3 The Applicant, M/s Rachna Art Prints Pvt. Ltd., manufacturer exporter is also availing the benefits under Cenvat Credit Rules, 2004. They had procured grey fabrics from M/s Shiv Deep Fashion Pvt Ltd., M/s Priyadarshan Fashion Pvt Ltd., M/s Hanuman Textiles and Shri Nathji Textiles and then processed the grey fabrics and the processed fabrics goods were exported. On scrutiny of the rebate claims and documents/records submitted by the Applicant, some noticeable and conspicuous deficiencies were noticed in respect of the claims filed which are as follows:

- (a) During the investigation it was found that the bank account number 03321200000204 in the Development Credit Bank is maintained in the name of M/s Hanuman Textiles and one Shri Chetan Patel had purportedly opened this account. However,

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investigation revealed that the aforesaid account was actually operated by one Shri Amit Mandalal Agarwal and M/s Hanuman Textiles does not have any kind of business operations and was total non-existing and bogus firm. The transaction being carried out from the aforesaid account were in the nature of business of shroff i.e. cheque discounting. Statement of Shri Chetan Patel was recorded on 21.05.2008 under Section 14 of the Central Excise Act, 1944 where he interalia stated that he was working as electrician and he does not have any aforesaid current account No. and he had never taken any kind of business in the name and style of M/s Hanuman Textiles and he does not know any firm in the name of M/s Parth Impex or any person from M/s Parth Impex.

- (b) Investigation revealed that grey fabrics manufacturers (namely Hanuman Textiles) had issued only bogus duty paid invoices of grey fabrics without actual manufacture and supply of grey fabrics on commission basis with sole intention to fraudulently pass on Cenvat credit to the next stage in the long change which ultimately enable the exporter to claim fraudulently rebate of Central Excise duty which was never paid by either the aforesaid grey fabrics manufacturer or by the processors.

Hence the Applicant was issued Show Cause Notice dated 28.08.2015. The adjudication authority, Deputy Commissioner of Central Excise, Division-III, Surat-I vide Order-in-Original No. SRT-III/288/2015-16/R dated 29.10.2015 rejected the rebate of Rs. 79,785/-. Aggrieved, the Applicant filed appeal with the Commissioner(Appeals) who vide Order-in-Appeal No. CCESA-VAD(APP-II)VK-348/2016-17 dated 17.11.2016 rejected their appeal



**2.4 F.No.195/01/17-RA, F.No.195/237/17-RA and F.No.195/238/17-RA**

The Applicant, M/s Rachna Art Prints Pvt. Ltd., manufacturer exporter is availing the benefits under Cenvat Credit Rules, 2004. They had procured grey fabrics from M/s Sadik Textiles, M/s Rajeshree Fabrics and M/s Sanjay Textiles respectively and then processed the grey fabrics and the processed fabrics goods were exported. On scrutiny of the rebate claims and documents/records submitted by the Applicant, some noticeable and conspicuous deficiencies were noticed in respect of the claims filed which are as follows:

- (a) During the investigation by DGCEI in respect of M/s Akai Fashions, Ankleshwar and statement of Shri Modammed Sadik Mohammed Kasim Bhorania, authorized signatory was recorded on 19.01.2006 and 11.01.2009 and he stated that he was the proprietor of M/s Sadik Textiles, he was running the said firm since last four years; he was the owner of the factory and had Gumastadar Licence and had purchase the grey fabrics from M/s Mahalaxmi Trading Co. Surat and others and availed the Cenvat credit on the basis of said invoices which wer found fake/non-exist. It shows that the transaction between grey suppliers i.e. M/s Sadik Textiles and the Applicant were only paper transaction without any physical sale or purchase of grey fabrics. M/s Sadik Textiles issued only duty paid invoices of the grey fabrics with the sole intention to pass-on fraudulent Cenvat credit to the Applicant.
- (b) The jurisdictional Superintendent of Central Excise, Range-IV, Division-IV, Surat vide his letter dated 30.08.2013 reported that the Applicant had availed the Cenvat credit on the basis of invoices issued by fake/bogus/non-existent firms and SCN F.No. V(ch.54)3-87/ADC/DEM/2008 dated 16.01.2009 for Rs. 49,22,193/- was issued for availment of Cenvat credit on fake/bogus invoice and the

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same was adjudicated by the Addl. Commissioner of Central Excise, Surat-I vide Order-in-Original No.10/ADJ/ADC-PKK/D/2010 dated 07.07.2010 and disallowed the Cenvat credit of Rs. 49,22,193/-.

- (c) The Joint Commissioner(Prev), Surat-I vide his letter dated 07.02.2008 has instructed not to sanction any pending rebate claims in respect of grey supplier M/s Sadik Textiles as they have passed on the credit by issuing the invoices without delivery/supply of goods as the sell is fraudulent, the buyer's invoice will not be valid documents of duty payment and actually no duty was paid and the goods were not supplied to the processors by them.
- (d) The Applicant had purchased grey fabrics from M/s Rajeshree Fabrics. On going through the invoices dated 09.11.2005 and 10.11.2015 issued by M/s Rajeshree Fabrics, it was observed that name of buyer is mentioned as M/s Vandana Overseas and name of the consignee mentioned as M/s Pee Tee silk Mills Pvt Ltd. And the name of the Applicant was nowhere mentioned in the said invoices.
- (e) The Applicant had purchased grey fabrics from M/s Sanjay Textiles, Surat. On going through the invoices dated 23.01.2006, 24.01.2006 and 25.01.2006 issued by M/s Sanjay Textiles, it was observed that name of buyer is mentioned as M/s Aakanksha Overseas and name of the consignee mentioned as M/s Vrindavan Dyeing Mills Pvt Ltd. And the name of the Applicant was nowhere mentioned in the said invoices.
- (f) Therefore it is established that the goods exported by the Applicant under the rebate claims could not be correlated with the goods mentioned in the grey mentioned in the grey invoices issued by M/s Rajeshree Fabrics and M/s Sanjay Textiles respectively on the basis of which the Cenvat credit was taken by the Applicant and the

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said fraudulent Cenvat credit was utilized for payment of Central Excise duty on exported goods for which rebate is filed.

- (g) A search was conducted on 18.11.2008 by DGCEI, Vadodara at the premises of M/s Rajeshree Fabrics, M/s Pee Tee silk Mills Pvt Ltd and M/s Sanjay Textiles. During the course of search operations, the records of M/s Rajeshree Fabrics and M/s Sanjay Textiles were thoroughly examined and statement of Shri Naimesh Jaivardhan Jariwala, authorized signatory of both the companies was recorded and he stated that he supplied only duty paid invoices without accompanies of grey fabrics mentioned in the grey invoices issued to exporter, who further have been sent to the Applicant who have wrongly availed Cenvat credit on the strength of aforesaid fake/bogus invoice which is fraudulently Cenvat credit. A Show Cause Notice F.No. V/15-06/DCGEI/VAPI/2008 dated 18.08.2011 was issue to M/s Rajeshree Fabrics, M/s Pee Tee silk Mills Pvt Ltd and M/s Sanjay Textiles for fraudulently availing Cenvat credit without supply of physical goods to the Applicant.
- (h) It shows that the Applicant have not exported the same fabrics shown to have been purchased from M/s Rajeshree Fabrics and M/s Sanjay Textiles respectively as correlation between the two materials could not been established by the Applicant, it mere paper transaction for availment of fraudulent Cenvat credit and therefore the rebate claims are not admissible.

Therefore, the Applicant was issued three Show Cause Notices all dated 28.08.2015. The adjudication authority, Deputy Commissioner of Central Excise, Division-III, Surat-I vide Order-in-Original No. SRT-III/284 to 287/2015-16/R dated 29.10.2015, SRT-III/395/2015-16/R dated 24.11.2015 and SRT-III/394/2015-16/R dated 24.11.2015 rejected the rebate of Rs. 5,09,059/-, Rs. 37,076/- and Rs. 39,580 respectively. Aggrieved, the Applicant filed appeals with the Commissioner(Appeals) who vide Order-in-Appeal Nos. CCESA-

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VAD(APP-II)VK-345/2016-17 dated 07.11.2016, CCESA-VAD(APP-II)VK-25/2017-18 dated 15.05.2017 and CCESA-VAD(APP-II)VK-26/2017-18 dated 15.05.2017 respectively rejected their appeals.

The details of the eight revision application are as given below:

Sl.No.	Rebate claim (Rs)	OIO No & date	Order-in-Appeal No. & Date	Revision Application No.
1	48,575	SRT-V/ADJ-910 to 911/2014-R dt 02.01.2015 rejected	CCESA-VAD(APP-II)VK-243/2016-17 dt. 4.09.2016	195/542/16-RA
	33,249			
2	61,282	SRT-III/242 to 244/2015-16/R dt 08.10.15 rejected	CCESA-VAD(APP-II)VK-335/2016-17 dt. 07.11.2016	195/05/17-RA
	63,176			
	19,108			
3	2,05,564	SRT-III/282 to 283/2015-16/R dt 29.10.15 rejected	CCESA-VAD(APP-II)VK-341 & 342/2016-17 dt. 07.11.2016	195/02-03/17-RA
4	2,22,125			
5	79,785	SRT-III/288/2015-16/R dt 29.10.15 rejected	CCESA-VAD(APP-II)VK-348/2016-17 dt. 17.11.2016	195/04/17-RA
6	1,11,964	SRT-III/284 to 287/2015-16/R dt 29.10.15 rejected	CCESA-VAD(APP-II)VK-345/2016-17 dt. 07.11.2016.	195/01/17-RA
	1,11,889			
	1,68,231			
	1,16,957			
7	37,076	SRT-III/395/2015-16/R dt 24.11.15 rejected	CCESA-VAD(APP-II)VK-25/2017-18 dt. 15.05.2017	195/237/17-RA
8	39,580	SRT-III/394/2015-16/R dt 24.11.15 rejected	CCESA-VAD(APP-II)VK-26/2017-18 dt. 15.05.2017	195/238/17-RA

3. Aggrieved, the Applicants filed the current Revision Applications on the grounds:

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(i) It is not in dispute that the processors had discharged the Central Excise duty on the goods supplied by them. The reason for rejection of rebate claims is not correct as during the operative period of the

scheme 2003-04, grey weaver viz Bhavesh Rameshchandra was in existent and had correctly issue the invoices along with grey fabrics and then only the processed fabrics had come out on which the duty was discharged and exported. And This aspect is not under challenge.

- (ii) The Applicant had never taken any credit on the basis of the invoices of grey manufacturer as the grey fabrics were supplied to processor under the invoices of M/s Priyadarshini Fashions Pvt. Ltd., M/s Hariom Silk Industries, M/s Hanuman Textiles, M/s Hardik Textiles, M/s Agarwal Twisting Works, M/s Shri Krishna & Ram Industries, etc who are in existent and not under Alert Circular.
- (iii) In para 5.2 the findings of the Commissioner(Appeals) is that the DGCEI had investigated the matter in the case of Deepak Processors where the Hanuman Textiles was found fake/bogus firm, this is not acceptable as during the relevant period 2003-04 the firms were very well in existent. Due to closure of the scheme in July 2004, all the firms were not working as the scheme was not in existent and the DGCEI conducted investigation t late stage when the firms were closed otherwise all firms were very well in existent.
- (iv) The Applicant had submitted the documents that the duty paid grey fabrics was purchased and payment was made, processed fabrics was received for which also payment of duty was made along with job-charges etc and the goods were exported and accepted by the department. Therefore, the duty element suffered on the said exported goods in the form of incentives is required to be refunded by way of rebate.
- (v) The Applicant prayed that the order passed by the lower authorities be set aside and their rebate claims be allowed with interest.

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- (vi) The goods were physically received from the Central Excise registered dealer M/s Pepco Fabrics and Central Excise registered manufacturer

M/s Ram Tex Fab and were directly delivered to M/s Rachna Art Prints Pvt Ltd. Hence the goods were purchased from registered manufacturer which was delivered to processor who processed the fabrics and returned the goods under their invoice on payment of duty which were ultimately exported. Therefore, they there is no cause to deny the legitimate rebate claim to the Applicant.

(vii) The scheme of chain of Cenvat credit was only for the period 2003-04 and it was deleted on 09.07.2004, whereas the period of purchase of grey fabrics by the Applicant was 2007-08 when the registration were granted only after physical verification of the premises, etc. and that the said company is in existent. Further, the payment for grey fabrics were made by cheque as indicated in the invoice itself by putting the stamp giving the details of cheque number, date and bank.

(viii) M/s Pepco Fabrics are also engaged in processing of grey fabrics and availing credit on grey fabrics and had availed the Cenvat credit wrongly to the extent of Rs. 63,52,552/- and were issue SCN dated 02.02.2010 by DGCEI. Nowhere in the said SCN it is indicated that the grey fabrics purchase from M/s Shah Fabrics, M/s Surbhi Corporation, M/s Kesar Fabrics, M/s Parth Impex were supplied to the Applicant. From the statement of Shri Anil J Agarwal, Managing Director of M/s Pepco Fabrics it is clear that they were importing polyester filament yarn from China and were availing Cenvat credit and from the said filament yarn grey fabrics wer manufacture which were cleared to the Applicant.

(ix) The SCN issued to the Applicant itself says that M/s Pepco Fabrics had taken credit on the basis of the invoices issue by M/s Shah Fabrics, M/s Surbhi Corporation, M/s Kesar Fabrics, M/s Parth Impex and that they had shown the grey fabrics were processed in their unit. This clearly shows that the wrongly availed Cenvat credit was used to show the processed fabrics cleared by them from the

above grey suppliers which indicated that there is no nexus of the credit with grey supplied to the Applicant on payment of duty which were manufactured from the imported raw material received from China.

- (x) The rebate claims were filed in the year 2007-08 for export of processed fabrics in accordance with law. The case booked against M/s Rachna Art Prints Pvt Ltd. by DGCEI for which no action can be taken against the Applicant when there is no nexus with the processors and Applicant. The Applicant had not supplied the grey fabrics and therefore the question of denial of rebate claims does not arise.
- (xi) Here the transaction between the processor supplier of the goods and the Applicant for the export of the goods are genuine, all documents for the purpose of export is genuine.
- (xii) The allegations made in the SCN relying upon the SCN issued against M/s Rachna Art Prints Pvt Ltd. by DGCEI cannot be the base either for issuance of the SCN or for confirmation of the SCN rejecting genuine rebate claims of the Applicant.
- (xiii) The Applicant prayed that order of the lower authorities be set aside and their rebate claims be allowed with interest.

**F.No. 195/04/17-RA, F.No.195/01/17-RA, F.No.195/237/17-RA and F.No.195/238/17-RA**

- (xiv) F.No. 195/04/17-RA and F.No.195/01/17-RA - The Applicant/manufacturer had purchased grey fabrics from the grey suppliers i.e. M/s Shiv Deep Fashion Pvt Ltd., M/s Priyadarshan Fashion Pvt Ltd., M/s Hanuman Textiles, Shri Nathji Textiles and M/s Sadik Textile, who were holding Central Excise registrations, which was physically received in the mill under proper transportation as indicated on the invoice itself and the payment for grey fabrics were made by account payee cheques. Hence the goods were purchased from registered manufacturer which was delivered to the Applicant

F.No. 195/542/16-RA, F.No. 195/05/17-RA,  
F.No. 195/02-03/17-RA, F.No. 195/04/17-RA,  
F.No.195/01/17-RA, F.No.195/237/17-RA,  
F.No.195/238/17-RA

who processed the fabrics and returned the goods under their invoice on payment of duty which were ultimately exported. Therefore they there is no cause to deny the legitimate rebate claim to the Applicant.

- (xv) F.No.195/237/17-RA - M/s Pee Tee Silk Mills was supplied grey fabrics by M/s Vandana Overseas. However due to closure of the unit, M/s Pee Tee Silk Mills returned the grey fabrics to M/s Vandana Overseas and the said merchant supplied the goods to the Applicant, manufacturer and the same goods was which were supplied by M/s Rajeshree Fabrics. Applicant who subsequently processed the fabrics and exported the same on payment of Central Excise duty and the said duty have been accepted by the department.
- (xvi) F.No.195/238/17-RA - The goods were ordered by the Applicant, manufacturer from M/s Aakansha Overseas who had earlier supplied goods to process house M/s Vrindavan Dyeing Mills Pvt Ltd. The said processor had shut down the factory and returned the grey fabrics to M/s Aakansha Overseas. On cancellation of overseas buyer's order, M/s Aakansha Overseas had supplied the goods (initially received from M/s Sanjay Textiles) to the Applicant, who in turn processed the fabrics and exported the same on payment of Central Excise duty from Cenvat Credit Account as well as from PLA and the said duty have been accepted by the department.
- (xvii) The scheme of chain of Cenvat credit was only for the period 2003-04 and it was deleted on 09.07.2004, whereas the period of purchase of grey fabrics by the Applicant was 2007-08 when the registration were granted only after physical verification of the premises, etc. and that the said company is in existent. Further, the payment for grey fabrics were made by cheque as indicated in the invoice itself by putting the stamp giving the details of cheque number, date and bank. In spite of this fact, the presumption have been made that grey fabrics have not been supplied which is against the evidence on record.



F.No. 195/542/16-RA, F.No. 195/05/17-RA,  
F.No. 195/02-03/17-RA, F.No. 195/04/17-RA,  
F.No.195/01/17-RA, F.No.195/237/17-RA,  
F.No.195/238/17-RA

- (xviii) The Applicant had exported the goods in accordance with law and on receipt of proof of export, the rebate claims were filed along with necessary documents and duty paid nature of the goods are not in dispute, therefore there is no cause to disqualify the genuine rebate claim on the basis of the so call unwarranted allegation made in the SCN which are not applicable at all to the case of present case.
- (xvii) The Commissioner had erred in not considering the point of law that the normal period of issuance of SCN where no other time limit is prescribed is one year considering Gujarat High Court's judgment in the case of Ani Elastics [2008 (222) ELT 340 (Guj)]. The present SCN was issued after a period of seven years and therefore the same is barred by limitation.
- (xix) The lower authorities have failed to appreciate that there is not a single statement from the registered dealers or manufacturers that there was any conspiracy with the said registered dealers or manufacturers with the Applicant. Therefore, the presumption of conspiracy by the lower authorities are beyond the scope of SCNs and the orders based on the said presumption is not sustainable in law.
- (xx) The Applicant prayed that the order passed by the lower authorities be set aside and they rebate claims be granted with interest.

4. The Commissioner, Central Excise, Customs & Service Tax, Surat-II vide letter dated 03.04.2017 submitted the following submissions:

**F.No.195/542/16-RA**

- (i) In para 5.2 of the findings of the Commissioner(Appeals) it is held M/s Hanuman Textiles is a fake/ bogus firm, whereas in the present revision application, the Applicant has submitted that the firm were in existence during 2003-04; that due to delete of the scheme in July 2004, all the firms were not working as the scheme was not in existent

and the DGCEI conducted investigation later stage when the firms were closed. This submission of the Applicant is false because in this case the invoices involved are of the year 2007 and it is evident from Para 10 of the SCN dated 11.03.2014 that M/s Hanuman Textiles was merely used for the purpose of cheque discounting and the statement of Shri Chetan Patel recorded on 21.05.2008 clearly established that he had never done any business of cloth or yarn.

(ii) The Department prayed that Order-in-Original and Order-in-Appeal be upheld and the revision application be rejected.

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 observes that the Commissioner (Appeals) vide impugned orders have upheld the respective Order-in-Original rejecting the rebate claims filed by the Applicants mainly on the issue of non-production of evidence of the genuineness of the Cenvat Credit availed by the processors M/s Mullaji Prints Pvt. Ltd. and M/s Rachna Art Prints Pvt. Ltd. on the basis of invoices issued by grey manufacturers who were figuring in the Alert Notices issued by the DGCEI and Central Excise department for fraudulent availment of Cenvat Credit. Further, rejection of rebate claims by the original authority on other issues (discussed at para 2 supra) have also been upheld by the Commissioner (Appeals) in his impugned Orders on the grounds that the Applicants had failed to produce the details/documents required by the adjudicating authority while dealing with the verification of the rebate claims of the Applicants.

7. While upholding the Order-in-Original on the ground of non-production of evidence of the genuineness of the Cenvat Credit availed by the processors and details documents for verification of the rebate claims of

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F.No.195/238/17-RA

the Applicants, the Commissioner (Appeals) in his impugned orders observed as under:

F.No. 195/542/16-RA

*"In view of the above discussion, I opine that the payment made by the process/manufacture in the impugned case cannot be considered as payment of duty in terms of Section 3 of Central Excise Act, 1944 and as a result all the rebate claims arising out of such export clearance are liable for rejection."*

F.No.195/05/17-RA and F.No. 195/02-03/17-RA

*"In this case under appeal, the appellants were given ample opportunities and time to submit the required details and documents to establish the genuineness of their rebate claims, but they could not satisfy the rebate sanctioning authority for genuineness of their rebate claims."*

F.No. 195/04/17-RA

*"At the material time period, the same modus operandi was being adopted by most of the fabrics suppliers, processors and exporters in which the availment and utilization of cenvat credit was on paper fraudulently and most of the exporters had even taken the benefit of rebates. In view of these facts and circumstance, non-allowing the cross examination does not vitiate the proceedings initiated by adjudicating authority or in the present appeal. Moreover, I find that no valid grounds for the same were made by the appellants in their submissions."*

F.No.195/01/17-RA

*"At the material time period, the same modus operandi was being adopted by most of the fabrics suppliers, processors and exporters in which the availment and utilization of cenvat credit was on paper fraudulently and most of the exporters had even taken the benefit of rebates. In view of these facts and circumstance, I do not find any reason for allowing cross examination of Shri Sadik and also non-allowing the same does not vitiate the proceedings initiated by adjudicating authority or in the present appeal."*

F.No. 195/237/17-RA and F.No. 195/238/17-RA

*"The appellants has not produced any evidence of receipt and utilization of grey fabrics and also of payment of duty on grey fabrics shown to have been received and utilized in the processed fabrics exported under claim of rebate."*

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F.No. 195/02-03/17-RA, F.No. 195/04/17-RA,  
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F.No.195/238/17-RA

*The burden to prove the admissibility of the Cenvat Credit availed by the appellant was upon them. Since there was only paper transaction and no receipt of the grey fabrics involved, the Cenvat Credit availed by the appellant was fraudulent and duty shown to have been paid on the goods exported (in respect of which the rebate was claimed) cannot be said genuine duty payment. The amount shown to have been paid by the appellant on the exported goods can also not be considered as 'duty'. The Apex Court judgment in the case of Omkar Overseas Ltd. [2003 (156) ELT 167 (SC)] has in unambiguous terms held that rebate should be denied in cases of fraud. In Sheela Dyeing & Printing Mills (P) Ltd. [2007 (219) ELT 348 (Tri-Mum)], the Hon'ble CESTAT has held that any fraud vitiates transaction."*

8. The current issues are for the period from 2007 to 2009. Government observes that amongst the list of purchaser of grey fabrics who availed Cenvat Credit of Central Excise duty by showing receipt of grey fabrics from allegedly bogus units, the name of the M/s Mullaji Prints Pvt. Ltd and M/s Rachna Art Prints Pvt. Ltd., also appeared. Therefore, it was necessary that the duty paid nature of the export goods (for which the applicant had claimed rebate), was ascertained. Therefore, in order to verify the authenticity of the Cenvat credit availed by the processors M/s Mullaji Prints Pvt. Ltd and M/s Rachna Art Prints Pvt. Ltd., on the strength of invoices received by them from grey fabrics suppliers and the subsequent utilization of such Cenvat credit for payment of Central excise duty, on the above mentioned exports made by the Applicants, an opportunity was given to the Applicants for submission of document / records regarding the genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-Is. In the instant cases the Applicants had not submitted any documents / records proving the genuineness of the availment of Cenvat credit on grey fabrics, Therefore, the Original authority in the respective Order-in-Originals observed that the duty payments and the existence of the grey manufacturer /supplier of M/s Mullaji Prints Pvt. Ltd and M/s Rachna Art Prints Pvt. Ltd., were of utmost important, however Applicants have not produced the relevant documents, therefore, genuineness of the Cenvat Credit availed on input used in export fabrics

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could not be verified due to non-submission of relevant records by the Applicants.

9. Perusal of eight Order-in-Originals also revealed that the processors of the exported goods was M/s Mullaji Prints Pvt. Ltd and M/s Rachna Art Prints Pvt. Ltd., and there is nothing on record to show that the name of M/s Mullaji Prints Pvt. Ltd and M/s Rachna Art Prints Pvt. Ltd., was appearing in the Alert Notices issued by DGCEI or Central Excise Authorities. However, they were issued show cause notices by DGCEI and Central Excise Authorities and the details are as given below:

- (a) SCN F.No. V(Ch.54)3-03/Dem/Dv/V/09-10 dated 23.04.2009 issued by Asstt. Commr., Central Excise, Customs & Service Tax, Division-V, Surat-I to M/s Mullaji Prints Pvt. Ltd., Surat., manufacturer and Shri Fazalbhai Z Banarsi, Director of M/s Mullaji Prints Pvt. Ltd., Surat for wrong availment and utilization of Cenvat credit amounting to Rs. 29,959/- on the basis of invoice issued by fake/bogus supplier of grey fabrics namely M/s Bhavesh Rameshcandra, Surat who was declared fake vide Alert Circular dated 03.05.2005.
- (b) SCN F.No. V(ch.54)3-87/ADC/DEM/2008 dated 16.01.2009 for Rs. 49,22,193/- was issued to M/s Rachna Art Prints Pvt. Ltd. for availment of Cenvat credit on fake/bogus invoice and the same was adjudicated by the Addl. Commissioner of Central Excise, Surat-I vide Order-in-Original No.10/ADJ/ADC-PKK/D/2010 dated 07.07.2010 and disallowed the Cenvat credit of Rs. 49,22,193/-.
- (c) The Deputy Director, DGCEI, Vadodara issued SCN F.No. INV/DGCEI/BRU/29-2008 dated 10.05.2010 to M/s Rachna Art Prints Pvt. Ltd for involvement in fake transaction of grey fabrics.

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F.No.195/238/17-RA

- (d) The Additional Commissioner of Central Excise, Surat-I issued SCN F.No. V(ch.54)3-77/Addl./Dem./AD/08-09 dated 20.10.2008 for Rs. 33,90,576/- to M/s Rachna Art Prints Pvt. Ltd. for taking and utilizing of Cenvat credit on the strength of inadmissible invoices and the invoices issued by the fake/bogus supplier/manufacturers.

Further, even though suppliers have allegedly committed fraud, it is necessary to establish beyond doubt that the buyer is knowingly involved in the fraud committed by the supplier which in the present case has not been established on record. Thus, the outcome of the investigation/Show cause Notices issued to various suppliers as well as to the Applicants, if any, is imperative for taking any further decision in the matter.

10. Government observes that the benefit of rebate claim cannot be denied merely on the basis of surmises and conjecture. GOI vide its Order No. 501/2009-CX, dated 29-12-2009, in F. No. 195/88/2007-RA-CX, in the case of M/s Vikram International observed that

*".....there is no doubt that the goods have not been exported out of India in terms of Rule 18 of Central Excise Rules, 2002 read with procedure prescribed under Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 and under certification of Customs authorities at the port of export. There is no observation to the contrary either in the order of rebate sanctioning authority or order of Commissioner (Appeals). It is also observed that goods were supplied to the applicant under cover of duty paying Central Excise documents and in the invoices issued the duty amount paid by manufacturer has been mentioned and for the goods supplied the applicant has made payment of total amount inclusive of Central Excise Duty. This position is not disputed. The only statutory requirement of duty paid character by way of certification by Supdt. Central Excise in triplicate copy of ARE-1 in terms of Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 read with paras 8.3 and 8.4 of Central Excise Manual is also not in dispute. In the order-in-original and order-in-appeal, there is no charge or allegation that the transaction between exporter/applicant and the manufacturer/supplier was not at arms length or not in the nature of a transaction in the normal course of*

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*business or non-bona fide and influenced by any extra commercial consideration. In fact there is nothing on record to establish, much less point out even prima facie any role direct or indirect, connivance or intention of the applicant in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices.....*

*The applicant/exporter who has bonafidely purchased and exported the goods after payment of entire amount inclusive of duty per se cannot be also penalized by way of denying his claim for rebate if otherwise it is in order, especially when no evidence has been laid to show any mutuality of interest financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods.....”.*

A similar view has also been taken by GOI in its Order No. 351/2010-CX, dated 26.02.2010 in F. No. 195/130/2007-RA-CX in respect of M/s Sheetal Exports.

11. In view of discussions and findings elaborated above, Government is of the considered opinion that a detailed verification into the allegations is required to be carried out. This verification is also necessary to establish the genuineness or otherwise of the Cenvat credit availed and subsequently utilized by the Applicant for payment of duty towards the above exports.

12. In view of above circumstances, Government sets aside all the Order-in-Appeals issued by Commissioner (Appeal-II), Central Excise, Customs, Service Tax, Vadodara details which are given in Para 1 supra and the cases are remanded back to the original authority for denovo adjudication for a limited purpose of verification of duty payment in all these rebate claims on the basis of documentary evidence available as well as outcome of the investigations/show cause notices as discussed supra and to pass a well-reasoned order after following the principles of natural justice. The Applicants are also directed to submit all the documents relating to availment of Cenvat credit, concerned ARE-1s along with copies of Bill of Ladings, BRCs for verification and any other documents evidencing payment of duty. The original authority will complete the requisite verification

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expeditiously and pass a speaking order within eight weeks of receipt of this Order.

13. The eight Revision applications are disposed off in above terms.

*Shrawan Kumar*  
29/9/21  
(SHRAWAN KUMAR)

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

327-334  
ORDER No. /2021-CX (WZ)/ASRA/Mumbai DATED 29.9.2021

To,

1. M/s. Aakanksha Overseas.,  
177/1, GIDC, Pandesara,  
Surat-394 221.
2. M/s Vandana Overseas,  
Plot No. 410/B ( Plot No. 177/1),  
GIDC, Pandesara,  
Surat-394 221.
3. M/s Rachna Art Prints Pvt Ltd.,  
234/1-B, GIDC,  
Pandesara,  
Surat-394 221.

Copy to:

1. The Commissioner of CGST, New Central Excise Building, Chowk Bazar, Surat - 395 001.
2. Commissioner(Appeal-II), Central Excise, Customs, Service Tax, Vadodara
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.