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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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005**

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F.No. 195/457/13-RA /6136

Date of Issue: 20/10/2021

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ORDER NO. 344/2021-CX (WZ) /ASRA/MUMBAI DATED 30.9.2021 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.

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**Subject** : Revision Application filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/841/RGD/2012 dated 23.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai Zone-II.

**Applicant** : M/s Supreme (India) Overseas Corporation, Surat

**Respondent** : Commissioner of Central Excise(Appeals), Mumbai Zone-II.

**ORDER**

This Revision Application has been filed by the M/s Supreme (India) Overseas Corporation, "Supreme House", plot No. 823/2, Road No. 8, GIDC, Sachin, Surat-394 230 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. US/841/RGD/2012 dated 23.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai Zone-II.

2. The brief facts of the case is that the Applicant is a merchant exporter, had exported goods ie. processed fabrics from M/s Vrindavan Dyeing Mills Pvt Ltd, Surat and filed three rebate claims total amounting to Rs. 5,34,085/- (Rupees Five Lakhs Thirty Four Thousand and Eighty Five Only) under Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-CE(NT) dated 06.09.2004. The rebate claims were scrutinized and a Deficiency Memo Cum Show Cause Notice dated 23.02.2011 was issued to the Applicant on the following grounds:

- (a) The Chapter sub-heading No. of the Central Excise Tariff declared in the Central Excise invoice and in the corresponding Shipping Bills did not tally;
- (b) In the mandatory certificate regarding self sealing of the export goods to be given by the manufacturer in the ARE-1, it is merely mentioned that the goods have been packed and no mention is made regarding sealing of the goods which indicated that the goods were not sealed before export;
- (c) It is seen that the duty amount claimed as rebate have arised out of duty debited through Cenvat . Therefore, the Applicant was request to furnish the relevant documentary evidence/certification regarding payment of Central Excise duty at input stage (on grey fabrics) used in the manufacture of export goods.

- (d) The Bank Realization Certificates were not submitted;

As the SCN dated 23.02.2011 was returned undelivered by the postal authorities, one more address of the Applicant was ascertained from an "Alert Circular" dated 28.02.2005 issued by Surat-I Commissionerat and a fresh SCN dated 23.2.2011 was send to the Applicant to the new address on the following additional grounds:.

- (e) The exported goods i.e. processed fabrics from M/s Vrindavan Dyeing Mills Pvt Ltd, Surat were fully exempt under Notification No. 30/2004-CE dated 09.07.2004 and in view of Section 5A(1) of Central Excise Act read with CBEC's Circular No. 937/27/2010-CX dated 26.11.2011 the processors ought not to have cleared the goods on payment of duty and thereby creating no necessity for filing rebate claim.

However, the second SCN dated 23.12.2011 was also returned undelivered. The rebate sanctioning authority Deputy Commissioner, Central Excise (Rebate), Raigad Commissionerate vide Order-in-Original No. 1803/11-12/DC(Rebate)/Raigad dated 14.01.2012 rejected the entire rebate claims.

3. Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-III. The Commissioner(Appeals) vide Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 rejected their appeal on the grounds that

- (i) The provision of self sealing/self certification was not followed;
- (ii) The Bank Realization Certificates were not submitted, it creates a doubt that whether the Applicants are having the BRC or not as after the clear finding of the adjudicating authority, the same was not submitted in appeal.
- (iii) The name of the Applicant was figuring in the Alert notices issued by the Assistant Commissioner, Central Excise Surat-I for

fraudulent availment of Cenvat credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers. The credit had been availed by who may have availed the Cenvat credit fraudulently and the Applicant may also be a party in the said fraudulent availment of Cenvat credit. The bonafide nature of transaction is imperative for admissibility of the rebate claim filed by the Applicant.

4. Aggrieved, the Applicant has filed the instant Revision Application mainly on the following grounds:-

- (i) The Applicant had given the letter intimating the change in address in 2009 and the department had also accepted communication from the Applicant from their new address in 2010. Now the department cannot go back in 2012 and state that the department was not aware of the new address of the Applicant.
- (ii) The Applicant had not received either the show cause notice or the deficiency memo or the personal hearing notices from the adjudicating authority and hence the impugned order has been issued exparte.
- (iii) Regarding challenge to Alert Circulars, etc are bereft of any merit inasmuch as Order-in-Original was passed exparte.
- (iv) Though submission of BRC is not a statutory requirement under the Central Excise Law, the Applicants in the revision application have submitted the BRC for all the rebate claims.
- (v) The Applicant had filed the rebate claim on 11.07.2006 and they were not given copies of SCN dated 23.11.2011 and alleged Alert Circular. The allegation of rejection of the rebate claim on the basis of the name of the Applicant figuring in the Alert Notice is barred by limitation. In this they relied on the judgment of the Hon'ble High Court of Gujarat in the

case of Prayagraj Dyeing and Printing Mills Pvt Ltd., 7 Others Vs UOI [Tax appeal/1153/2011].

- (vi) Since there is no denial of the fact of the said goods having been physically exported, the Applicant cannot be made liable for any alleged fake invoices issued. Therefore, the denial of rebate is illegal as the credit taken and passed on to the Applicant by the grey fabrics suppliers has become final and irrevocable. In this they relied on the case laws of Commr. of C.Ex, Chandigarh Vs Sadashiv Casting (P) Ltd. [2005 (187) ELT 381 (Tri.-Delhi)].
- (vii) Since the department has not taken any action against the grey fabric suppliers, the denial of rebate of the Applicant is illegal. It is surprising/shocking that the grey fabrics suppliers alleged to be fake or bogus have not even been made a party to the show cause notice. The payment made to the Applicant by traders and the registration granted to the weavers by the department should be considered before acting upon the alert circular bereft of any evidence. In this they relied on the case laws of A.B. Tools Ltd Vs Commr. of C.Ex, Chandigarh [2002 (149) ELT 908 (Tri.- Delhi)].
- (viii) Since there is no allegation of non grant of registration to the weavers who supplied grey to the traders/brokers through whom the Applicant had received the grey fabrics and invoices, only on the basis of alert circulars, credit validly availed by them cannot be rejected/recovered by way of non-granting of rebate.
- (ix) Demand of Interest- The Applicant refer to Circular No. 670/61/2002-CX dated 01.10.2002 and demand interest on the rebate claim which is sanctioned beyond the prescribed period of three months of filing of the claim.

(x) The Applicant prayed that the Order-in-Appeal be set aside and order that they are entitled to the rebate claims of Rs. 5,43,085/- with interest.

5. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date RA filed	Date COD filed	No. of days delay
1	195/457/13-RA	23.11.12	10.12.12	26.03.13	18.03.14	90+16

Applicant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD') on the following grounds:-

- (i) The Order-in-Appeal dated 23.11.2012 was received by them on 10.12.2012 and the limitation period of 03 months expires on 11.03.2013 (as the last day for filing i.e. 10.03.2013 happens to be a Sunday and a public holiday). Hence as stated in the cover sheet of the impugned Order-in-Appeal, the Applicant on 07.03.2013 send the revision application through Speed Post to the Joint Secretary, Government of India, Ministry of Finance, Department of Revenue, Jeevan Deep Building, Parliament Street, New Delhi-1 with the presumption that the application would be received before 11.03.2013.
- (ii) The Applicant received a defect memo dated 16.01.2014 from the Revisionary Authority Office, Hudco Vishala Building, 14B Wing, 6<sup>th</sup> floor, Bhikaji, Cama Place, New Delhi directing to file the COD without specifying the date of receipt of the said application.
- (iii) The Applicant prayed that the delay be condoned as the delay occurred due to change in address of the Revisionary Authority

6. Personal hearing in the case were fixed on 16.03.2018, 09.10.2019, 05.11.2019, but no one appeared. However, there was a change in the Revisionary Authority, hence hearing were granted on 03.02.2021, 17.02.2021, 18.03.2021, 25.03.2021, 15.07.2021 and 22.07.2021. None appeared for the hearing. Hence the case is taken up for decision based on records on merits.

7. 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.

8. Government first proceeds to discuss the issue of delay in filing these three revision applications. It is clear that Applicants have filed the revision applications after 3 months + 16 days. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. Government finds that the delay of filing the revision application was due to change in office address of the Revision Authority. Hence, Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

9. On perusal of the records, Government observes that the Applicant, Merchant Exporter had processed the fabrics from M/s Vrindavan Dyeing Mills Pvt Ltd, Surat, exported them under three ARE-1s all dated 08.03.2006 and filed three rebate claims total amounting to Rs. 5,34,085/- under Rule 18 of Central Excise Rules, 2002 read with Notification No 19/2004-CE(NT) dated 06.09.2004. The rebate claims were scrutinized and a Deficiency Memo Cum Show Cause Notice dated 23.02.2011 was issued to the Applicant. As the SCN dated 23.02.2011 was returned undelivered by the postal authorities, a fresh SCN dated 23.12.2011 send to the Applicant to the new address. However, the second SCN dated 23.12.2011 was also returned undelivered. The rebate sanctioning authority Deputy Commissioner, Central Excise (Rebate), Raigad

Commissionerate vide Order-in-Original No. 1803/11-12/DC(Rebate)/Raigad dated 14.01.2012 rejected the entire rebate claims on the following grounds:

- (i) The exported goods i.e. processed fabrics from M/s Vrindavan Dyeing Mills Pvt. Ltd, Surat were fully exempt under Notification No. 30/2004-CE dated 09.07.2004 and in view of Section 5A(1) of Central Excise Act read with CBEC's Circular No. 937/27/2010-CX dated 26.11.2011 the processors ought not to have cleared the goods on payment of duty. Since the payment of duty on the goods exported was not warranted, it naturally follows that the claims for rebate filed by the Applicant cannot be sanctioned;
- (ii) The Chapter sub-heading No. of the Central Excise Tariff declared in the Central Excise invoice and in the corresponding Shipping Bills did not tally;
- (iii) The procedure required for self sealing and self certification given in paragraph 6.1 of the Chapter 8 of the CBEC Manual was not followed;
- (iv) The Bank Realization Certificates were not submitted;
- (v) The Applicant's name figures in the Alert List issued by the Central Excise, Surat-I Commissionerate under F.No. IV/9-HPIU-VII/43/04-05 dated 15.03.2005 as purchaser of bogus invoices of grey fabrics who availed rebate of Central Excise duty by showing receipt of grey fabric from bogus units. The authenticity of credit availed by the processors on the strength of invoices so received from grey fabrics suppliers and subsequent utilization of such credit for payment of excise duty on exports, was required for which the Applicant were given opportunity for submission of documents/ records but none were produced. Hence duty paid by



processors out of accumulated Cenvat credit is not free from doubt.

Aggrieved, the Applicant filed an appeal with the Commissioner of Central Excise (Appeals), Mumbai-III.

10. Government observes that the Commissioner(Appeals) vide Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 has allowed their appeal on two issues i.e.

- (i) *"The facts of the present case are different. The proviso to Notification No. 30/2004-CE makes it abundantly clear that the exemption contained in the Notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of Cenvat Credit Rules, 2004. The ARE-1s under which the goods were exported clearly declare that the goods have been manufactured availing facility of Cenvat credit under the provisions of Cenvat Credit Rules, 2004. Therefore, it is clear that they could not have been possibly exempt under Notification No. 30/2004-CE. Accordingly, this ground for rejection of rebate claim cannot be sustained and has to be set aside."*
- (ii) *"In this respect it is found that the proforma of the Shipping Bills prescribed by the CBEC does not have a column for Central Excise Tariff classification of the exported product. What is required to be mentioned in the shipping Bills is RITC.Code Number which is not necessarily the same as CET classification. Therefore, there is no requirement of giving CET classification in the Shipping Bills. Accordingly, the classification of the product in the Excise invoices cannot be held as wrong merely on the basis of RITC Code number mentioned on the corresponding Shipping Bills"*

and rejected their appeal on three issues:

- (iv) *"In respect of the rejection on the ground that the provision of self sealing /certification is not followed, I find that the provision of self sealing/self certification is mandatory provision and the appellant has not followed the procedure as laid in paragraph 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 06.09.2004 and para 6.1 of the Chapter 8 of CBEC Manual."*
- (v) *"Similarly, in respect of rejection on the ground that BRC was not submitted, it creates a doubt that whether they are having the BRC or not"*

*as after the clear finding of the adjudicating authority, the same was not submitted in appeal."*

- (vi) *"The other main ground on which the adjudicating authority has rejected the claim is that the appellants did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The name of the appellant was figuring in the Alert notices issued by the Assistant Commissioner, Central Excise Surat-I for fraudulent availment of Cenvat credit on the basis of 'invoices' issued by bogus/non-existent grey manufacturers. The credit had been availed by who may have availed the Cenvat credit fraudulently and the appellants may also be a party in the said fraudulent availment of Cenvat Credit. The bonafide nature of transaction is imperative for admissibility of the rebate claim filed by the Applicant."*

11. Government notes that the Notification No.19/2004-CE(NT) dated 06.09.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of "presentation of claim for rebate to Central Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned

12. In respect of the rejection on the ground that the provision of self sealing/certification is not followed and BRC not produced, Government observes that the Applicant in their revision application is completely silent on issue of self sealing and supervision certificate not given but have submitted the 03 BRC Form No. 1 issued by Bank of India all dated 13.06.2006 in respect of Shipping Bill No. 4115972, 4115965 and 4115968 all dated 06.03.2006. Government finds that the Customs Officers would have signed and certified the Original and duplicate copies of the ARE-1 only after the Applicant had attested them. Further, failure to comply with the provision of self-sealing and self-certification was laid down in para 3(a)(xi) of the Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 is condonable if exported goods are co-relatable with goods cleared from factory of manufacture or warehouse and sufficient

corroborative evidence is available to correlate exported goods with goods cleared from the factory. Thus it is incumbent upon the adjudicating authority to verify the documentary evidences furnished by the Applicant as resorting rejection on technical grounds/procedural lapses would not serve the purpose of justice.

13. On the ground of non-production of evidence of the genuineness of the Cenvat Credit availed by the manufacturer M/s Vrindavan Dyeing Mills Pvt Ltd, Surat and details documents for verification of the rebate claims of the Applicant in respect of three ARE-1s. all dated 08.03.2006, Government observes that the Applicant's name is appearing in the Alert List issued by the Central Excise, Surat-I Commissionerate under F.No. IV/9-HPIU-VII/43/04-05 issued on 15.03.2005 and the current case is of 08.03.2006. 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 Applicant 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 manufacturer M/s Vrindavan Dyeing Mills Pvt Ltd, Surat 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 Applicant, an opportunity was given to the Applicant 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 Order-in-Original dated 14.01.2012 observed that the duty payments and the existence of the grey manufacturer /supplier of M/s Vrindavan Dyeing Mills Pvt Ltd, Surat were of utmost important, however Applicant has not produced the

relevant documents, therefore, genuineness of the Cenvat Credit availed on input used in export fabrics could not be verified due to non-submission of relevant records by the Applicant. 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 Applicant, if any, is imperative for taking any further decision in the matter.

14. 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 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.

15. Further, Government observes that the Applicant vide their letter dated 29.01.2009 addressed to the Assistant/Deputy Commissioner(Rebate), Central Excise, Khandeshwar, Navi Mumbai had informed that

*“We hereby inform you that, we have changed our office premises from Supreme House, Near Krishna Petrol Pump, Udhana & E-3613 to 3619 & E-3672 to 3678, Raghukul Textile Market, Ring Road Surat to New Premises situated at Supreme House, 1<sup>st</sup> floor, Plot No. 823/2, Road No. 8, G.I.D.C., Sachin, Surat. Therefore, you are requested to do all correspondence to our new address.”*

Government finds that the impugned Order-in-Original was passed without giving an opportunity of hearing to the Applicant and therefore it amounts to violation of principle of natural justice.

16. 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.

17. In view of above circumstances, Government sets aside the Order-in-Appeal No. US/841/RGD/2012 dated 23.11.2012 passed by the Commissioner of Central Excise(Appeals), Mumbai Zone-II and the case is remanded back to

the original authority for denovo adjudication for a limited purpose of verification of duty payment in this 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 expeditiously and pass a speaking order within eight weeks of receipt of this Order.

18. The Revision application is disposed off in above terms.

  
30/9/21

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 344/2021-CX (WZ)/ASRA/Mumbai

Dated 30.09.2021

To,  
M/s Supreme (India) Overseas Corporation,  
"Supreme House", 1<sup>st</sup> floor,  
Plot No. 823/2, Road No. 8,  
GIDC, Sachin,  
Surat-394 230.

Copy to:

1. The Commissioner of CGST, Belapur Commissionerate, CGO Complex, Sector No. 10, CBD Celapur, Navi Mumbai - 400 614.
2. Sr. P.S. to AS (RA).
3. Guard file
- ~~4. Spare Copy.~~