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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

F NO. 195/1466/12-RA/1158

Date of Issue: 15.02.2018

ORDER NO. 34 /2018-CX (WZ) /ASRA/MUMBAI DATED 13.02. 2018 OF THE OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

Applicant : M/s. Surat Impex Pvt. Ltd.

Respondent: Commissioner, Central Excise, Raigad.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/523/RGD/2012 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai

:ORDER:

This revision application has been filed by M/s Surat Impex Pvt.Ltd. Plot No 115, 2nd Floor, Opp. Bombay Food, Katargam, Surat 394230 (hereinafter referred to as "the applicant" against the Order-in-Appeal No. US/523/RGD/2012 dated 30.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II.

2. The case in brief is that the applicant had filed an appeal against order-in-original No. 2176/11-12/DC (Rebate)/Raigad dated 17.02.2012 passed by Deputy Commissioner, Central Excise(Rebate), Raigad rejecting 9 (Nine) rebate claims collectively for Rs.6,12,884/- on the ground that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC Circular No. 937/27/2010-CX dated 26.11.2011, the applicants could not have paid duty and did not have the option to pay the duty. The adjudicating authority also rejected the claims on other grounds.. These grounds as mentioned in the impugned order were that no declaration is made at Sr. No. 3 (a),(b) and (c) & SI. No. 4 in the form ARE-1; in respect of two claims the authority is wrongly mentioned as Refund Section, Meher Building, Chowpatty; Chapter sub heading Number and description of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills was not tallying; Bank Realisation Certificates not submitted; in respect of Rebate claim no. 16169, the vessel name and the rotation number does not tally in the export documents; in respect of Rebate claim no. 10846, the mate receipt is not mentioned on the shipping bill and thus conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled. The adjudicating authority further observed that as the exported goods have been procured from M/s Agarwal Textile Mills and M/s Swastik Poly Prints Pvt. Ltd. against whom the case was booked by DGCEI, the applicant had failed to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit by the processors and subsequent utilization by them for payment of duty on the above exports.



3. Vide impugned Order-in-Appeal, the Commissioner (Appeals), upheld order-in-original No. 2176/11-12/DC (Rebate)/Raigad dated 17.02.2012 passed by Deputy Commissioner, Central Excise (Rebate), Raigad on grounds mentioned in impugned Order and rejected the appeal filed by the applicant.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the various grounds as enumerated in their application. Main grounds of appeal are follows;

4.1 The Applicants state and submit that it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them competitive in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods competitive in the International market, the tax element in the exporter's cost is refunded to him through the system of rebate. This is only a reimbursement and not any kind of incentive. The Applicants have claimed the said amount of duty paid on the goods exported and paid at the time of clearance for export. Therefore, rejection of the genuine rebate claim only on technical grounds as is done by the adjudicating authority in the present case, is nothing but harassment to the genuine exporter and discouraging export.

4.2 Findings of adjudicating authority regarding declaration on ARE-1 Sr.No.. 3.(a), (b) and (c) & Si. No. 4 this issue is already settled by the Hon'ble Joint Secretary, R.A. GOI as procedural one. In this connection applicants submit that they did not avail any benefit of said incentive and this is only a procedural mistake remained to be marked and needs to be condoned.



- 4.3 As regards findings of adjudicating authority and Hon. Commissioner (Appeals) in r/o BRC the applicant submits that BRC for all the nine ARE-1s are enclosed herewith. However, the BRC is not the document required to be filed alongwith the rebate claim as per Notification No. 19/2004 -CE (NT) dated 06.09.2004. Applicants have received full remittance for all these exports.
- 4.4 In case of duty payment certificate the applicant submits that they have submitted the duty payment certificate from the jurisdictional officers alongwith rebate claim and also requested in their submission that a sealed letter addressed to jurisdictional range officers may be given for giving fresh duty payment certificate as they have stopped giving the duty payment to the exporter as the Assistant Commissioner (Rebate) is directly calling the duty payment certificates. No findings on this aspect by the Adjudicating authority nor any letter has been issued to the jurisdictional Range Supdt. Instead the Adjudicating Authority as well as Commissioner (Appeals) rejected the genuine rebate claims stating that duty may not have been paid on grey fabrics. This nothing but presumption and assumption and also harassment to the genuine exporter and violation of Government Policy that no duty should be exported along with the goods.
- 4.5 Para 2 of Notification No. 19/2004 -CE (NT) dated 06,09,2004 shows the mandatory requirement. In Para 3 of the Notification Procedures are shown. Hence Mandatory requirement and Procedural requirements are separately shown in the Notification. This is not a statutory requirement and the circular is only an instruction. When the applicant have fulfilled the mandatory requirement i.e physical export of goods and duty payment procedural requirements needs to be condoned in the interest of export. In this case duty payment particular has been directly called from jurisdictional officer by the department and also Triplicate copy received from the jurisdictional officer in sealed



cover submitted to Maritime Commissioner. Hence rejection is not proper and correct.

4.6 In this connection the applicant rely on the following Orders Judgements which are favourable to them:

- Commissioner Vs Suncity Alloys Pvt. Ltd - 2007(218) ELT 174 (Raj)
- Tafe Limited Vs CCE Chennai - 2008(227) ELT 80 (Tri-Mumbai).
- GTC Exports Ltd. -1994(74) ELT 468 (GOI)

4.7 The applicants have exported the goods under ARE-1 and submitted the triplicate copy of ARE-1 within 24 hours as required. After export submitted rebate claim along with all the required documents. There is no allegation that whatever cleared has not been exported. It is also accepted that the goods cleared under ARE-1 has been exported. The remaining allegation is procedural which needs to be condoned in the light of the GOI Order No. 514/2006 dated 30.06.2006 - M/s Ambica Knitting, M/s Banter International Order No. 255/07 dated 27.04.2007, M/s Vipul Dye hem Ltd. Order No. 873/2006 dated 29.09.2006, M/s Britannia Industries Ltd. Mumbai Order No. 380-382/07 dated 29.06.2007.

4.8 It is a fact that the Applicant did not violate any Rules and Regulations except a minor technical error. This may be condoned in the interest of export. The applicants cannot be penalized for merely for non compliance of procedures. Applicant rely on the following judgements :

Krishna Filaments Ltd 2001 (131) ELT 726 (GOI).

CBEC Circular No. 510/06/2000-CX., dated 3-2-2000

5. A personal hearing was held in this case on 27.12.2017. Shri R.V. Shetty, Advocate duly authorized by the applicant appeared for hearing and reiterated the submission filed through Revision Application. He relied on case laws 2014 (299) ELT 49 (Trib-Mumbai), 2013 (294) ELT 203 (Bom) and



2009 (235) E.L.T. 785 (Guj.) He pleaded that the Revision Application may be allowed and the Order-in-Appeal be set aside.

6. 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. On perusal of records, Government observes that the applicant's rebate claim made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was rejected on the ground as mentioned in para supra.

7. Government observes that the Appellate authority i.e Commissioner (Appeals) has upheld the findings for rejecting the rebate on the following issues :

- (i) Sr.No. 3(a),(b) and (c) & Sl.No.4 in the form ARE-1 is not certified by the applicant which are held to be the provisions which are required to be followed by the applicant wherein they declare the facts about the availment of facility of Cenvat Credit or benefit of exemption Notification;
- (ii) In respect of rejection on the ground that BRC was not submitted, the applicant contended that they had submitted the same and if required the same can be submitted now. 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.
- (iii) The applicants did not produce evidence of the genuineness of the Cenvat Credit availed by the processors. The applicants are a merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. During the material time their processors M/s Agarwal Textile Mills and M/s Swastik Poly Prints Pvt. Ltd. were appearing on the DGCEI alert list for fraudulently availing Cenvat Credit on the basis of 'invoices' issued by bogus / non-existent grey manufacturers. The applicants may also be a party in the said fraudulent availment of Cenvat Credit. The bona fide nature

of transaction between the merchant-exporter and supplier-manufacturer is imperative for admissibility of the rebate claim filed by the merchant manufacturer. The Commissioner (Appeals) relying on the Hon'ble Bombay High Court's Judgement in UOI Vs Rainbow Silk 2011(274) ELT 510(Bom), Revisionary Authority's Order Re: Sheetal Exports-2011(271)ELT.461 (GOI) and Board Circular No.766/82/2003-CX dated 15.12.2003 arrived at a conclusion that lower authorities have rightly observed that duty paid character of goods exported was not proved

8. As regards the first issue i.e Sr.No. 3(a),(b) and (c) & Sl.No.4 in the form ARE-1 is not certified by the applicant which are held to be the provisions required to be followed by the applicant wherein they declare the facts about the availment of facility of Cenvat Credit or benefit of exemption Notification, Government observes that it is now a well settled law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in *Birla VXL* - 1998 (99) E.L.T. 387 (Tri.), *Alfa Garments* - 1996 (86) E.L.T. 600 (Tri), *Alma Tube* - 1998 (103) E.L.T. 270, *Creative Mobous* - 2003 (58) RLT 111 (GOI), *Ikea Trading India Ltd.* - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

9. As regards the issue of non submission of Bank Remittance Certificates (BRCs) for export clearances by the applicant, Government observes that rebate claims are submitted along with relevant documents as mentioned in para 8.1 to 8.5 of Chapter 8 of the CBEC Manual of supplementary Instructions. The list of documents does not prescribe submission of BRCs as one of the pre condition for claiming rebate. As



such, a rebate claim under Rule 18 which is required to be filed within one year from the date of export is not required to be filed along with BRCs as the period for receipt of remittance is one year or as extended. However, in a scenario where claims are pending for sanction beyond one year of the date of export and if the BRC had become due, it cannot be held that rebate ought to be sanctioned as it is not a prescribed document at the time of filing rebate. However, in view of submissions of copies of BRCs, by the applicant, non submission/availability of BRCs cannot be a ground for rejecting the rebate claim.

10. As regards the issue that the applicant did not produce evidence of the genuineness of the Cenvat Credit availed by the processors, Government observes from Order in Original dated 17.02.2012 that "alert lists were issued by several investigative agencies such as Directorate General of Central Excise Intelligence & local Central Excise and Customs Preventive formations and the names of processors viz. M/s Agarwal Textile Mills and M/s Swastik Ploy Prints Pvt. Ltd., from whom the export goods were procured by the applicant, were appearing in such Alert list issued by the DGCEI, Vadodara under F.No. INV/DGCEI/BRU/3/08/794 dated 17.06.2008

11. In this connection Government finds it pertinent to rely on Government of India's Order No. 1370-1371/13-CX dated 11.11.2013 in case of M/s Akshita Exports. Government has carefully gone through the above order. Para no. 4.4.3 & para no. 8 of the order are worth mentioning and relevant to this case and the same read as under;

"4.3.3 On 09.04.2008, DGCEI, Vadodara searched the premises of the present applicant and withdrawn all records for verifying the grey suppliers invoices whether the said grey suppliers/manufacturers are in existence or not. Accordingly, the entire records of the applicant were scanned by the said DGCEI authority and had found that out of several grey manufacturer suppliers five grey manufacturer suppliers were found non-existent and therefore the rebate claims of Rs.53020571- was proposed to be rejected vide show cause notice F.No.INV/DGCEI/BRU/13/2010 dated 02.12.2010 and other grey

suppliers and their registration were found genuine which are as under:-

1. Maa Krupa Textile
2. PrahaladbhaiKanjibhal (HUF)
3. Sadguru Fabrics
4. ArvindhbaiKanjibhai HUF
5. Krishna Corporation
6. Sabir Textiles
7. Mahaball Fabrics
8. Shikha Textiles
9. Agarwal Twisting Works
10. Jyoti Silk Mills
11. Indian Polyfins P. Ltd.
12. Saraswat Trading Investment Co.
13. Singhal Brothers
14. Rahul Textiles
15. Saraswat Industries
16. P.Kumar Fabrics
17. Bharat Enterprises
18. M.B.Twister
19. Shree Hari Fabrics
20. Sanjay Textile
21. Shree Tirupati Synthetics
22. Shreenathji Textiles
23. Shri Tejanand Silk Mills
24. Hanuman Textiles
25. Hardik Sales
26. Priyadarshini Fashion P.Ltd.
27. Shree Hariom Silk Industries
28. Mahalaxmi Corporation
29. Ram Tex Fab

4.4.3 Even after scanning of the grey supplies by Director General of Central Excise Intelligence, Vadodara and their Show Cause Notice dated 02.12.2010, the rebate for export of the goods were not processed and therefore the applicant had preferred writ petition in the High Court of Bombay vide number 5878 of 2011 for sanction and grant of rebate of Rs. 80,71,603/- which was disposed of on 01.08.2011 directing the rebate sanctioning authority to dispose of the rebate claims within a period of six months from 01.08.2011. Instead of disposing of the rebate claims considering the DGCEI Show Cause Notice F.No.INV/DGCEI/BRU13/2010 dated 02.12.2010, the Deputy Commissioner, Central Excise (Rebate), Raigad acted prejudicially issuing Show Cause Notice dated 15.12.2011 after a period of more than five years on technical grounds just to deny the legitimate rebate claims of the applicant and ultimately rejected the rebate claims against



'which appeal was preferred to Commissioner(appeals) who accepted several contentions of the applicant and however, upheld the order of the rebate sanctioning authority on the ground that the applicant did not produce evidence of genuineness of Cenvat Credit availed by the processors. The finding of the Commissioner (Appeals) appears to be incorrect when the Director General of Central Excise Intelligence, Vadodara Regional Unit while issuing Show Cause Notice dated. 02.12.2010 have clearly found out that except five grey suppliers, other grey suppliers are found genuine and correct and in existence and duty paid nature of grey fabrics is accepted in exhaustive investigation which are the basis of evidence and therefore the finding of the Commissioner(Appeals) without accepting the said evidences that the applicant did not produce evidence of genuineness of the Cenvat Credit availed by the processors (**M/s Swastik Poly Prints Pvt. Ltd. And M/s Agarwal Textile Mills**) have vitiated the legitimate and genuine claim of the applicant. In view of this, the judgments. cited by the Commissioner(appeals) of Rainbow Silk Mills and others in his order is not applicable as the facts of the case based on evidences is quite distinguishable.

8. Government first takes up the revision application No.195/1462/12-RA for decision wherein the rebate claims amounting to Rs.5178049/- was rejected by the original authority on the ground that the applicant got their impugned goods processed from two processors namely M/s Agrawal Textile Mills, Surat and M/s Swastik Poly Prints Pvt. Ltd., Surat, who received grey fabrics from five bogus/non-existent firms namely; M/s Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles as revealed *in DGCEI investigation and paid duty on exported goods from wrongly availed cenvat credit on the basis of bogus invoices raised by said bogus firms. The rebate claims were denied since actually no duty was paid on said goods.

8.1. Government observes that the DGCEI investigated the case and issued show cause notice INV/DGCEI/BRU/13/2010 dated 2.12.2010 wherein they categorically stated that the said five suppliers were non-existent; that the processors availed cenvat credit on the basis of bogus invoices issued in the name of said five bogus suppliers; that the facts of the case clearly proves culpability of the merchant exporter; and that payment of duty from such fraudulently availed cenvat credit cannot be treated as payment of duty for granting rebate under Rule 18 of Central Excise Rules 2002. The DGCEI has issued a separate SCN No.DGCEI /AZU/36- 134/2010-11 dated 2.12.10 for recovery of fraudulently

availed cenvat credit on the basis of invoices issued by said five bogus/non-existed grey fabrics suppliers. The said SCN is issued to processors and applicant M/s Akshita Exports is also a co-noticee in that case of fraudulent availment of cenvat credit. The applicant in their written submission dated 26.9.2013 has stated that the said charges in the SCN was confirmed vide adjudication order dated 25.1.2012. As such, the applicant had facilitated the wrong availment of Cenvat credit by showing purchase / supply of grey fabrics on his account from the non-existent grey suppliers. Under such circumstances, the applicant was party to said fraudulent availment of Cenvat credit & then payment of duty fraudulently from such credit, on exported goods. As such, applicant was party to said fraudulent availment of Cenvat credit and the transaction between manufacturer and exporter was not bonafide.

12. From the aforesaid paras Government observes that DGCEI carried out detailed investigation with reference to all the pending rebate claims and issued SCN No. INV/DGCEI/BRU/13/2010 dated 2.12.2010 to M/s Akshita Exports denying the rebate claims on the ground that two processors M/s Agarwal Textile Mills, Surat and M/s Swastik Poly Prints Pvt. Ltd., Surat availed cenvat credit on the strength of bogus invoices raised by five bogus / non-existent suppliers of grey fabrics namely; M/s Shivam Textiles, M/s Hindustan Garments, M/s Balaji Silk Mills, M/s Suryanarayan Textile and M/s Shree Sai Textiles. These five grey manufacturer suppliers, have been shown to have supplied the grey fabrics to M/s Agarwal Textile Mills and M/s Swastik Poly Prints Pvt.Ltd., from whom the applicant procured the goods and exported the same. Hence, the findings of the original authority holds goods that duty paid nature of inputs i.e grey fabrics processed by the processors M/s Agarwal Textile Mills and M/s Swastik Ploy Prints Pvt. Ltd., is not free from doubt and consequently, the duty debited by the said processors in respect of export goods covered in the subject rebate claims is also not free from doubt.

13. On perusal of records, it is observed that the applicant filed different rebate claims of duty paid on exported goods under Rule 18 of Central Excise Rules, 2002. One of the grounds for rejecting the claims was that the applicants did not produce evidence of the genuineness of the Cenvat Credit

availed by the processors and the duty on exported goods was paid out of Cenvat credit taken on invoices raised by fake/fictitious firm/persons. This ground of rejection in the said order-in-original was upheld by Commissioner (Appeals) holding that bonafide nature of transaction between the merchant exporter and supplier manufacturer is imperative for admissibility of the rebate claim filed by the merchant manufacturer.

14. From Government of India's Order No. 1370-1371/13-CX dated 11.11.2013 in case of M/s Akshita Exports, Government observes that only five suppliers mentioned in para 10 above, were found to be bogus/nonexistent as per SCN dated 02.12.2010. There is no conclusion in the said SCN to the effect that suppliers other than above 5 suppliers are non-existent / bogus nor the same has been stated as bogus on the basis of any other evidence. The adjudicating authority has not brought on record any evidence to state that other suppliers of grey fabrics, if any, of the processors M/s Agarwal Textile Mills and M/s Swastik Ploy Prints Pvt. Ltd., in the instant case, were also fake or bogus. Further, from para No. 8.1 of Government of India's Order No. 1370-1371/13-CX dated 11.11.2013 in case of M/s Akshita Exports it is observed that the said charges in the SCN dated 02.12.2010 were confirmed vide adjudication order dated 25.01.2012. However, there is no reference to the same either in Order in Original or the Order in Appeal.

15. Government in this case observes from the Order in Original dated 17.02.2012 that opportunity was given to the applicant (merchant exporter) for submission of document /record 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-1, however, the claimant did not submit any records /documents proving the genuineness of the Cenvat credit availed & subsequently availed utilized by the processors for payment of duty on the above exports.

16. In this connection Government observes that there were some investigations caused and proper show cause notice was issued and

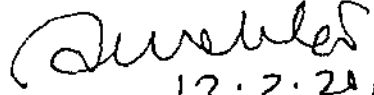
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adjudicated and the same would decide whether the duty payment was genuine or not.

17. In view of above circumstances, Government sets aside the impugned order and remands the case back to the original authority for denovo adjudication only for limited purpose of verification of Duty Payment Certificates, taking into account the adjudication order dated 25.01.2012 passed in respect of SCN No. INV/DGCEI/BRU/13/2010 dated 2.12.2010. The applicant is also directed to submit all the documents relating to payment of duty before original authority along with original copies of BRCs for veification. The original authority will complete the requisite verification expeditiously and sanction refund claim within four weeks of receipt of said documents from the applicant if they are found to be genuine.


18. Revision application is disposed off in above terms.

19. So, ordered.


13.2.2018
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 34 /2018-CX (WZ) /ASRA/Mumbai DATED 13.02.2018

To,
M/s. Surat Impex Pvt.Ltd.,
Plot No.115,2nd Floor,
Opp Bombay Foods, Kasanagar Road,
Katargam, Surat -370 140.


21.2.18

एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner, Central Excise, (Appeals) Raigad.
3. The Deputy / Assistant Commissioner, GST & CX Mumbai Belapur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.