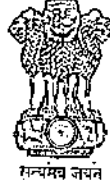


REGISTERED
SPEED POST



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, Cuff Parade,
Mumbai- 400 005

F. No. 195/411/2013-RA / 6070

Date of Issue: 20/10/2021

ORDER NO.351/2021/CX(WZ)/ASRA/MUMBAI DATED 30.09.2021, 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 No. BR(378)MI/2012 dated 05.11.2012 passed by Commissioner of Central Excise(Appeals), Mumbai Zone-I.

Applicant : M/s Karishma Overseas.

Respondent : Commissioner of Central Excise(Appeals), Mumbai Zone-I

ORDER

The instant application has been filed by M/s Karishma Overseas, 412-A, Turning Complex, Ghod Dod Road, Surat – 395 007 (all hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. BR(378)MI/2012 dated 05.11.2012 passed by Commissioner of Central Excise(Appeals), Mumbai Zone-I.

2. Briefly, the Applicant, had exported goods procured from manufacturers registered under Rule 12B of the Central Excise Rules, 1944 i.e. M/s Rama Silk Mills and M/s Rainbow Dyeing and Printing Mills Pvt. Ltd. in respect of 07 ARE-1s on payment of Rs. 8,66,968/ Central Excise duty through Cenvat credit and filed rebate claims under Rule 18 of Central Excise Rules 2002 read with Notification No. 40/2001-CE(NT) dated 26.06.2001. On scrutiny of the rebate claims and documents/records submitted by the Applicant, some noticeable and conspicuous deficiencies were noticed which are as follows:

- (a) The Applicant had not followed the procedure for clearance of goods under self-sealing/self-certification under claim of rebate as given in Chapter 7 and 8 of CBEC’s Excise Manual of Supplementary Instructions and in Board’s Circular No. 426/59/98-CX dated 12.10.1998 and subsequent amendment vide Circular No. 481/47/99-CX dated 23.08.1999 and Circular No. 736/52/2003-CX dated 11.08.2003. Hence the Applicant was requested to submit the acknowledgment or prior intimation given to the jurisdictional Supdt./Asstt/Dy. Commissioner with respect to clearance of the goods in question from the factory under self-sealing/self-certification. Alternatively, to submit a certificate from the jurisdictional Supdt./Asstt/Dy. Commissioner confirming that the goods were cleared under self-sealing/self-certification under prior intimation to the department.

(b) The Applicant had submitted the duty payment certificate which was issued before the instruction No. 8 dated 03.02.2005 issued by Surat-I Commissionerate. Hence the Applicant was requested to submit the genuineness of the duty payment certificate issued by the jurisdictional Superintendent after re-verifying of Cenvat etc. in temper proof sealed cover.

Accordingly, the Applicant was issued Deficiency memo Cum Show Cause Notice dated 05.05.2005. The adjudication authority, Assistant Commissioner of Central Excise (Rebate), Mumbai-I vide Order-in-Original 219/R/06 dated 29.03.2006 rejected the rebate of Rs. 8,66,968/-. Aggrieved, the Applicant filed appeal with Commissioner of Central Excise(Appeals), Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No. BR(378)MI/2012 dated 05.11.2012 rejected their appeal both on merits as well as on the time bar.

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

(i) The Applicant was communicated Order-in-Original No. 219/R/06 dated 27.03.2006 on 26.03.2010 and they preferred appeal on 10.05.2010 which was within prescribed time limit of sixty days and they had not filed any delay condone application as no such cause had arisen. Thus, the Order passed by the Commissioner (Appeals) was without any concrete corroborative evidence that the Order-in-Original was communicated prior to 26.03.2010 and hence the rejection of rebate claims in terms of Section 35 is not sustainable in law as the appeal was filed within prescribed time limit. In this the Applicant relies on the following case laws:

(a) Trans Global Agencies Pvt. Ltd. [2009 (245 ELT 757 (Tri.-Ahmd)];

(b) Amidev Agro Care Pvt. Ltd. [2012 (26) S.T.R. 299 (Bom.)]

(ii) The appellant submits that all the evidences as regards to filing of rebate claims are on record of adjudicating authority and Commissioner (Appeals) to show that in connection with 6 ARE-1s,

the Applicant is merchant exporter and in the case of one ARE-1 the Applicant is manufacturer exporter holding Central Excise Registration and there is no dispute regarding export of the goods and there is no show cause notice issued to the Applicant as regards to denial of any credit for the goods exported as manufacturer exporter. Further, there is clear finding of the adjudicating authority that the goods have been actually exported as evident from the original and duplicate copy of ARE-I and shipping bill certified by the Customs Officer and the duty payment certificates were submitted. In view of this, there is no cause to deny the rebate claims for the duty paid goods exported. Thus, the finding of the lower authorities for rejecting the rebate claims on merits is not sustainable in law and the appeal is required to allow with consequential relief.

- (iii) The identical findings have been given by the adjudicating authority as regards to export of the goods for 6 ARE-1s where the Applicant is a merchant exporter. Thus, considering the judgment of the Hon'ble Gujarat High Court in the case of Shree Shyam International and Roman Overseas and Prayagraj Dyeing and Printing Mills, the order passed by the lower authorities are required to set aside in the interest of justice.
- (iv) The appellant submits that the only finding of the lower authorities for denying rebate claims is that the Range Superintendent had not forwarded re-verified duty payment certificates in tamper proof sealed cover though the Range Superintendent was endorsed with the SCN-cum-deficiency memo for supplying duty payment certificate in tamper proof sealed cover after verifying the Cenvat credit availed by manufacturer. Thus, the default was on the part of the Range Superintendent and not the Applicant who have no control over the Central Excise Officer. This has been explained by the Revision Authority in the case of Guria Textiles and others vide order No. 1605-1615/12-CX dated 20.11.2012 wherein it is stated that —

"Similarly in case of RA Nos. 195/188/11 and 195/192/11, the duty payment certificate are to be submitted by the jurisdictional Range Superintendent cannot be ground for rejection of rebate claim.

Department should call for such certificates from Superintendent concerned. However, the main issue whether merchant exporter was party to fraud committed at manufacturer's end is required to be thoroughly examined in light of above discussed judgments."

In view of above, the rejection of rebate claims on the basis of the finding of the lower authorities are not sustainable in law when the duty paid export goods have been exported beyond doubt which is not in dispute as is clear from the finding portion of the original adjudicating authority.

- (v) The finding of the Commissioner (Appeals) as regards to violation of principles of natural justice to the Applicant for non-receipt of hearing memo for the adjudication proceedings is not sustainable in law in absence of any evidence brought on record by the Commissioner (Appeals) that in fact the said communication for personal hearing was served to the Applicant or returned by post or served in terms of Section 37C of the Central Excise Act, 1944.
- (vi) The Commissioner (Appeals) have not appreciated the grounds of appeal of the Applicant vide para 9.1 to 9.9 of the appeal memo which may please be considered the grounds of appeal for the present appeal also while deciding the present appeal for setting aside the orders passed by the lower authorities in the interest of justice.
- (vii) The Applicant prayed that their revision application be allowed with consequential relief.

4. Personal hearing in the matter was fixed for 26.03.2018, 03.10.2019, 10.02.2021, 24.02.2021, 18.03.2021, 25.03.2021, 20.04.2021, 27.04.2021, 06.07.2021 and 20.07.2021. However, none appeared for the hearing. Hence the case is taken up for decision based on records on merits.

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.

6.1 On perusal of the records, Government observes that the Applicant had procured seven consignments of fabrics, 01 from the Applicant's own unit, 01 from M/s Rama Silk Mills, and 05 from M/s Rainbow Dyeing and Printing Mills Pvt. Ltd. all from Surat. The said consignments were exported by the Applicant and rebate claims in respect of 07 ARE-1s totally to Rs. 8,66,968/- was filed under Rule 18 of Central Excise Rules 2002 read with Notification No. 40/2001-CE(NT) dated 26.06.2001. The details are as given below:

Sr.No	RCNo & dt	ARE-1 No & dt	S/B No & dt	Rebate Amount claimed (Rs)
1	1480 dt 27.4.04	04 dt 24.2.04	5324223 dt 23.2.04	71,323
2	1483 dt 27.4.04	787 dt 23.2.04	5324225 dt 23.2.04	55,435
3	3804 dt 30.11.04	269 dt 9.8.04	5347897 dt 10.8.04	2,74,666
4	3805 dt 30.11.04	270 dt 9.8.04	5347911 dt 10.8.04	87,272
5	3806 dt 30.11.04	272 dt 10.8.04	5347899 dt 10.8.04	2,03,343
6	3807 dt 30.11.04	291 dt 18.8.04	5349400 dt 18.8.04	87,545
7	3808 dt 30.11.04	295 dt 19.8.04	5350567 dt 26.8.04	87,384
			Total	8,66,968

6.2 On scrutiny of the rebate claims, the following discrepancies were found and a SCN dated 05.05.2005 was issued :

- (a) The Applicant had not followed the procedure for clearance of goods under self-sealing/self-certification under claim of rebate and hence the applicant was asked to submit the acknowledgment or prior intimation given to the jurisdictional Supdt./Asstt/Dy. Commissioner with respect clearance of the goods in question from the factory under self-sealing/self-certification. Alternatively, to submit a certificate from the jurisdictional Supdt./Asstt/Dy. Commissioner confirming that the goods were cleared under self-sealing/self-certification under prior intimation to the department.
- (b) The Applicant had submitted the duty payment certificate which was issued before the instruction No. 8 dated 03.02.2005 issued by Surat-I Commissionerate. Hence the Applicant was requested to submit the

genuineness of the duty payment certificate issued by the jurisdictional Superintendent after re-verifying of Cenvat etc. in temper proof sealed cover.

The adjudication authority, Assistant Commissioner of Central Excise (Rebate), Mumbai-I vide Order-in-Original 219/R/06 dated 29.03.2006 rejected the rebate of Rs. 8,66,968/-. Aggrieved, the Applicant filed appeal with Commissioner of Central Excise (Appeals), Mumbai Zone-I. The Commissioner(Appeals) vide Order-in-Appeal No. BR(378)MI/2012 dated 05.11.2012 rejected their appeal both on merits as well as on time limit.

7. Commissioner(Appeals) has elaborately recorded his findings on time bar aspect of appeal before him. His findings recorded in Para 5 are reproduced here-

"It is clear from the above that firstly the appellant is required to satisfy the Commissioner (Appeals) that he/they was/were prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days and secondly allow them to be presented within a further period of thirty days. In the present case no sufficient cause which prevented them from presenting the appeal within the aforesaid period of sixty days was produced. I am not at all convinced with the appellants about the date of receipt, as to why it took 1399 days to receive the order from the date of dispatch. No application for condonation of delay is filed. The amount involved in the appeal is Rs, 8,66.968/-. The rebate claims were filed in the month of April, 04 and November, 04. I am absolutely not satisfied with the circumstances that the appellant did not enquire about the status of their rebate claim involving such a huge amount for five years and nine months. At the material time various Alert Circulars were issued by Surat-I Commissionerate about the fraud being committed by different textile manufacturers and exporters by availing Cenvat credit on the basis of invoices pertaining to non-existent/bogus grey suppliers, that were further used by these persons in order to claim rebate that were otherwise not eligible. A Deficiency Memo cum Show Cause Notice was issued to the appellant on 05.05.2005 for non-compliance of self-sealing and self-certification procedure as envisaged in Board Circular No. 426/59/98-CX dated 12.10.1998; 481/47/99-CX. dated 23.08.1999 as amended by Circular No. 736/52/2003-CX dated 11.08.2003 and requesting them to submit various documents specified therein. Personal hearing was held on 26.05.2005 & 31.05.2005. The appellant neither replied to the Show Cause Notice nor produced the documents called for nor attended the personal hearing. It is observed that the address on which the Department sent the letters were as per record and in fact even in the present appeal the appellant have shown the same address that is on record i.e.

"412-A, Turning Point Complex,
Ghod Dod Road,
Surat - 395 001".

The respondent vide impugned order rejected the rebate claim for the reasons stated therein. It is absolutely unacceptable to me or for that matter to anyone that the appellant was not aware of the status of their rebate claim; that they never made any attempt whatsoever, to ascertain anything about their rebate claim; that they were unaware of the Show Cause Notice issued to them, personal hearing fixed or letter sent to them and about the passing of the impugned order for five years and nine months or for that matter 1399 days to receive the impugned order. I do not have the power to condone such delay in filing the appeal."

The Applicant was not been able to submit any satisfactory explanation on the same. In spite of numerous opportunity of personal hearing being offered, Applicant did not avail the same. This leads to conclusion that Applicant does not have anything further to submit. Hence I concur with finding of Commissioner(Appeals) that appeal before him was time barred.

8. Government observes 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 fraudulent 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 regarding verification of rebate claims sanction.

9. Government observes that in the current case, the issue is of the year 2004. 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 the Applicants, the Commissioner (Appeals) in his impugned orders observed as under:

"11.In the present case he was not satisfied with the evidence that the appellant had followed the prescribed procedure correctly and about the duty paid on the impugned export goods. Only the rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods can be granted. The next condition is that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order. In the present case, it is substantially evident that no evidence that duty has been actually paid by the Companies in question is produced in the manner as specified in the law. One of the supplier of the goods to the appellant is he himself (he is Proprietor of the unit) and still he did not produce the evidence of duty payment. This only raises the doubt about the genuinity of the transaction. When no evidence of duty payment has been provided and substantial condition is not fulfilled by the appellant where is the question of granting refund of the same in the form of rebate to these three Companies or for that matter to anyone else including the appellant."

10. Government observes that the Assistant Commissioner, CGST & Central Excise, Division-II, Surat vide letter dated 17.04.2018 has submitted that in subsequent investigation it was discovered that Applicant is a fictitious unit and Show Cause Notice dated 05.05.2006 was issued to the Applicant. The said Show Cause Notice was confirmed vide Order-in-Original No. SRT-I/ADJ/45/R/2006 dated 08.11.2006 and in appeal the Commissioner(Appeals) vide OIA No. RKA/501/SRT-I/08 dated 21.07.2008 upheld the Order-in-Original. Government finds that the Applicant in the revision application also, has not produced any documents in respect of the duty payment made by the Applicant. Hence, Government is in agreement with the findings of the Commissioner (Appeals) about the genuineness of the transactions. Therefore, Government holds that the rebate claims are not admissible.

11. Government finds in the wake of the Alert Circular of the Department and investigation which revealed a large scale scam wherein fraudulent Cenvat credit was availed without receipt of inputs i.e. grey fabrics against

fake invoice and the same was utilized for payment of duty on the clearance of export under claim of rebate and was also issued demand notices, the Applicant should have provided evidence to the effect that the duty paid on exports were out of genuine Cenvat credit which they have failed to do so. In the case of Omkar Overseas Ltd. [2003(156) ELT 167(SC)] Hon'ble Supreme Court has held in unambiguous terms that rebate should be denied in cases of fraud. In *Sheela Dyeing & Printing Mills (P) Ltd.* [2007 (219) E.L.T. 348 (Tri.-Mum.)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgment has been upheld by the Hon'ble High Court of Gujarat. In a judgment in the case of *Chintan Processor* [2008 (232) E.L.T. 663 (Tri.-Ahm.)], the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as follows:

"Once the supplier is proved nonexistent, it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."

12. In a similar case of M/s. Multiple exports Pvt. Ltd., Government vide GOI order No 668-686/11-Cx dt. 01-06-2011 has upheld the rejection of rebate claim by lower authorities. Division Bench of Hon'ble High Court of Gujarat, vide its order dated 11-10-2012 in SCA No 98/12 with SCA No 101/12 [reported in 2013 (288) E.L.T. 331 (Guj.)], has upheld the above said GOI Revision order dated 01.06.2011. Government also observes the contention of the Applicant that they had exported the goods on payment of duty and therefore, they are entitled to rebate of Excise duty. The same arguments came to be considered by the Division Bench of Hon'ble High Court of Gujarat in Special Civil Application No. 13931/2011 in *Diwan Brothers Vs Union of India* [2013 (295) E.L.T. 387 (Guj.)] and while not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench has observed as under :

"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the

authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or nonexistent, the petitioner cannot claim rebate merely on the strength of exports made."

12. Government also relies on the judgments of Mumbai High Court in case of Commissioner of Central Excise, Mumbai-I Vs M/s Rainbow Silks & Anr reported at 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court, Mumbai, in similar circumstances i.e., when a processor is a party to a fraud, wherein Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and utilized for payment of duty on goods exported, it was held that "since there was no accumulation of cenvat credit validly in law, there was no question of duty being paid there from" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

15. Government also relies in the case of M/s Poddar Exports (India) Vs Union of India [2015(316) ELT 179 (Guj)] Hon'ble High Court Gujarat while dismissing the Special Civil Application filed by the petitioner observed as under :-

"Under the circumstances, when the transactions between the manufacturer (processor) and the merchant exporter (petitioner) are found to be bogus and when it has been established that the purported suppliers are fake and fictitious persons and the entire transaction is found to be only billing activities for the purpose of taking undue advantage of the Cenvat credit and/or the rebate, no error has been committed by the Authorities below in denying the rebate claims claimed by the petitioner.

5.1 Now, so far as the contention on behalf of the petitioner that as the petitioner had exported the goods on payment of duty the petitioner is entitled to rebate of Excise duty is concerned, the same arguments came to be considered by the Division Bench of this Court in Special Civil Application No. 13931/2011 [2013 (295) E.L.T. 387 (Guj.)]. At that stage also, the petitioner of that petition heavily relied upon the decision of this Court in the case of D.P. Singh (supra). While not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench of this Court has observed as under :

"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."

In the present case also, there are concurrent findings of fact given by all the authorities below with respect to the fake transactions between the petitioner and M/s. Raju Synthetics Pvt. Ltd., we are of the opinion that all the authorities have examined the case in detail and as such no interference is called for. The conclusions arrived at by the authorities below are on the basis of evidence on record and such conclusions are not pointed out to be perverse. Under the circumstances, as such no interference in exercise of powers under Articles 226 & 227 of the Constitution of India, therefore, can be made."

16. In view of above discussions and findings and also applying the ratio of afore stated cases law, Government, finds no infirmity in impugned Order-in-Appeal No. BC/453/RGD(R)/2012-13 dated 06.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III the same is upheld as legal and proper.

17. The Revision Application is dismissed being devoid of merits.


20/9/21
(SHRAWAN KUMAR)

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

ORDER No. 351 /2021-CX (WZ)/ASRA/Mumbai Dated 30.09.2021

To,
M/s Karishma Overseas,
412-A, Turning Complex,
Ghod Dod Road,
Surat - 395 007.

Copy to:

1. The Principal Commissioner, CGST & CX, Mumbai South, 13th floor, Air India Building, Nariman Point, Mumbai 400 009
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.