

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

F. NO. 195/228/13-RA | 1972

Date of Issue: 20/11/2010

ORDER NO. 362/2018-CX (WZ) /ASRA/Mumbai DATED 31-10-2018  
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  
THE CENTRAL EXCISE ACT, 1944.

**Applicant** : M/s Atlas Export (India), 122/123, Neelkanth  
Commercial Centre, Sahar Road, Andheri (East),  
Mumbai - 400 099.

**Respondent** : Commissioner of Central Excise (Appeals), Mumbai-II  
Mumbai-400051.

**Subject** : Revision Applications filed, under section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
No.US/757/RGD/2012 dated 01.11.2012 passed by  
the Commissioner of Central Excise (Appeals) Mumbai-  
II.



**ORDER**

This Revision Application has been filed by M/s Atlas Export (India), Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/757/RGD/2012 dated 01.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – II.

2. Brief facts of the case are that the applicant is merchant exporter and has filed five rebate claims totally amounting to Rs. 6,33,182/- (Rupees Six Lakhs Thirty Three Thousand One Hundred Eighty Two Only) under Rule 18 of Central Excise Rules, 2002 in respect of goods manufactured by two different manufacturers / processors. The rebate sanctioning authority rejected the rebate claims on the grounds that full exemption under Notification No. 30/2004-CE dated 09.07.2004 was applicable to in respect of the said rebate claims, the 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, in respect of one claim non filing of EGM, variation in sailing date as per bill of lading and mate receipt and in respect of one claim the procedure required for self-sealing and self-certification given in Para 6.1 of the Chapter 8 of CBEC Manual has not been followed and thus the conditions for grant of rebate under Notification No. 19/2004-CE (NT) were not fulfilled. The rebate sanctioning authority observed that since the name of M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd. is appearing in the alert list issued by Raigad Commissionerate, the applicant was requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat Credit and subsequent utilization by the processors for payment of duty, which failed. Accordingly, rebate claims were rejected.

3. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-II. The Commissioner (Appeals) in his Order in Appeal held that the grounds for rejection were technical and condonable in nature. The denial of rebate claims on the ground that full exemption under Notification No. 30/2004 dated



09.07.2004 was available to the Applicant was also held to be incorrect as the exemption contained in the notification is not applicable to the goods in respect of which credit of duty on input has been taken under the provisions of Cenvat Credit Rules 2004. The ARE-1 clearly declare that the goods have been manufactured availing input Cenvat Credit. However, the rebate claims were rejected as the processors / manufacturers i.e. M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd. were figuring in alert notices issued by Commissioner Central Excise, Raigad for fraudulent availment of credit on the basis of invoices issued by bogus / non existent grey manufacturers, and held that, bonafide nature of the transaction between merchant exporter and supplier-manufacturer is imperative for admissibility of rebate claims. Accordingly, Commissioner (Appeals) rejected the appeal filed by the applicant vide Order in Appeal No. US/757/RGD/2012 dated 01.11.2012

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 4.1 the learned Commissioner has not arrived at any findings on the plea of non-supply of Commissioner (Appeal)'s Order by the adjudicator.
- 4.2 the impugned order is passed on the assumption that there was no bona fide nature of transaction between the merchant exporter and supplier manufacturer.
- 4.3 the Commissioner Appeals has mis-placed the reliance on the decisions - UOI v/s Rainbow Silks - 2011 (274) ELT 510 (BOM) and Sheetal Exports - 2011 (271) ELT 462 (GOI).
- 4.4 the Commissioner has failed to appreciate that in the present case both the grey supplier as well as the processors are existing firms.
- 4.5 when the duty element has been paid to the supplier in this case and the exports have been duly verified and certified by the Customs Officer, the rebate cannot be rejected.
- 4.6 the receipt of the inputs on payment of duty element to the supplier and the quantum is not under question. The processor



has paid duty on the value addition and cleared the same for export and goods have been exported. Therefore the order of denial of the entire rebate is not permissible in law.

- 4.7 there is no material on record to impugn the claim of rebate as regards quantity, quality or the amount of duty discharged at the time of export. Hence the claim was made in time and nothing irregular or erroneous as regards to the said claims.
- 4.8 The goods have been exported on valid shipping bills. The custom officers at the port of exports are duty bound to examine the goods if the containers are stuffed at the factory. The certificate in part 'B' of the ARE-1 has to be certified by the Customs Authority at the port of the shipment of the goods under the shipping bill to have been exported. The customs authorities are duty bound to examine the goods if they are sealed. There is no allegation that the custom officers have found any objection as regards the nature of the goods after examining them as prescribed. Therefore denying the rebate claim on this ground is not permissible in fact and law.
- 4.9 the exports from India are required to be encouraged and lawful incentives cannot be denied on technical grounds. The applicant has relied on the decision of GOI in the case of Sanket-2011 (268) ELT 125.
- 4.10 they also refer to and rely on the following orders where the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

The Union of India vs. A.V. Narasimhalu,  
1983 (13) E.L.T. 1534 (S.C)

Formica India vs. Collector of CEX, 1995  
(77) E.L.T. 511 (S.C)

Mangalore Chemicals and Fertilizers Ltd.  
vs. Dy. Commissioner, 1991 (55) E.L.T.  
437 (S.C.)

- 4.11 they submit that the impugned Order-In-Appeal and Order in-Original passed be set aside and the rebate claimed by them deserves to be sanctioned.



5. A Personal hearing held in this Revision Application was attended by Shri R.K. Sharma, Advocate and Smt Soma Sharma Advocate, on behalf of the applicant. They reiterated the submission filed on the date of personal hearing and pleaded that in view of the same, the Revision Application may be allowed and O-I-A be set aside. In their additional submissions filed on the date of hearing the applicant submitted as under :-

- the rejection of rebate- claim on technical grounds is harassment to genuine exporter and discourages export,
- the CBEC vide its 'Circular No.845/03/2006-CE dated 01.02.2007 has even permitted simultaneous use of both the Notifications No. 29/2004-CE & No.30/2004-CE both dated 09.07.2004. And especially provided provisions for textile manufacturers considering the use of common inputs in the manufacture by them. In instant Case Clamant is Merchant Exporter. (Circular copy attached for Reference),
- the endorsements pertaining to Sr. No. 3 to 5 on ARE- I have nothing to do with the rebate claims. All of these are post export benefits either from Customs or DGFT,
- the allegation of procedural nature raised are not statutory requirements and circular is only an instruction.
- as regards Sr. No. 3(c) of the said ARE-1 it talks about availment or whereas, in the instant case rebate is claimed on the finished exported goods. Non filling up these columns by the merchant exporter will not have any bearing on the admissibility of the rebate claim. Hence, rebate claim cannot be denied on this ground,
- The Commissioner (Appeals) and the adjudicating authority have overlooked the fact that it is settled law laid down in series decisions of various appellate authorities that claim for exemption is always optional i.e. the manufacture has the option of either claiming an exemption if it is available or relinquishes its entitlement to claim exemption. Moreover it has time and again been emphasized by the Hon'ble Tribunal, GOI, and Higher Courts that the Substantial benefit of rebate is not to be denied on technical and procedural grounds when duty paid and export of the goods is established. Such technical and procedural lapses are liable to be condoned. Hence, when the mandatory requirements have been fulfilled, the rejection of claim is not in order.
- They rely upon the following cases laws in support of the instant case.
  1. GOI Order - 2011-272-ELT-476-GOI M/s Inter Globe Services
  2. M/s Sanket Industries Limited. [2011 (268) E.L.T. 125 (G.O.]

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3. Krishna Filament Limited [2001 (131) E.L.T. 726 (G.O.I.)]
4. G.T,C, Export Limited [1994 (74) .E.L.T. 468 (001)1
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.
7. Government observes that the Commissioner (Appeals) vide his impugned Order has upheld the rejection of the rebate claims by the original adjudicating authority on the following grounds:-

(i) in respect of export under ARE-1 No. 3/2004-05 dated 18.10.2004 involving the duty amount of Rs. 1,76,103/- (Rupees One Lakh Seventy Six Thousand One Hundred Three Only) , the applicant has not followed the procedure as laid down in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 08.09.2004 and para 6.1 of the Chapter 8 of CBEC Manual. As the provisions of self sealing / self certification is mandatory and hence the subject claim is liable for rejection, and

(ii) The names of M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd. the processors of the goods were appearing in the alert list issued by Raigad Commissionerate and the applicant was requested to furnish the documentary evidence to prove the genuineness of the availment of Cenvat Credit and subsequent utilization by them for payment of duty, which they failed.

8. Government observes that Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of



the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

9. From the above Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed for identification and correlation of export goods at the place of dispatch. Since in respect of rebate claims under reference in the present case the procedure prescribed under Notification No. 19/2004-C.E. (N.T.) has not been followed scrupulously by the applicant and therefore correlation between the excisable goods claimed to have been cleared for export from factory of manufacturer and the export documents as relevant to such export clearances cannot be established.

10. Government observes that Joint Secretary, GOI in its Order No. 10/2016-CX dated 15.01.2016 in the case of M/s Universal Impex, while dealing with the similar issue observed as under:

*10. Government also observes that the applicant has relied on the various judgments regarding procedural relaxation on technical grounds. The point which needs to be emphasized is that when the applicant seeks rebate under Notification No.19/2004-CE (NT) dated 06.09.2004, which prescribes compliance of certain conditions, the same cannot be ignored. While claiming the rebate under Rule 18 ibid, the applicant should have ensured strict compliance of the conditions attached to the said Notification. Government places reliance on the judgment in the case of Mihir Textiles Ltd. Versus Collector of Customs, Bombay, 1997 (92) ELT 9 (S.C.) wherein it is held that:*

*"concessional relief of duty which is made dependent on the satisfaction of certain conditions cannot be granted without compliance of such conditions. No matter even if the conditions are only directory."*

11. Government therefore holds that not following the basic procedure of export cannot be treated as a minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. As such



*no merit in the plea of the applicant that the lapse on their part be considered as procedural lapse of technical nature which may be condoned.*

11. In view of the above, Government holds that provisions of self sealing / self certification are mandatory and upholds the impugned Order in Appeal so far as it relates to rejection of rebate claim on this ground.

12. As regards another issue for rejection of rebate claims, Government observes that the Commissioner (Appeals) at page 4 of the impugned Order in Appeal has observed that :

*"The Appellants are merchant exporter and the goods had been cleared on payment of duty by debit of Cenvat Credit. The processors, M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd, who processed the goods were figuring in the Alert notices issued by Central Excise Commissionerates for fraudulent availment of Cenvat Credit on the basis of 'invoices' issued by bogus/ non-existent grey manufacturers. The credit had been availed by the one who **may have** availed the said Cenvat Credit fraudulently and the appellants **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 exporter."*

13. Further, the Appellate authority in the impugned Order in Appeal has not adduced or relied upon any evidence that the transaction was not at arm's length, there are no findings that the transactions were bogus or were influenced by any extra commercial consideration or mutuality of interest between the Applicant and the supplier processors. While rejecting the rebate claim the impugned order states that, since the processors of manufacturing goods were figuring in the alert notices issued by Central Excise Commissionerates, the Applicants may also be a party in the said fraudulent availment of credit.

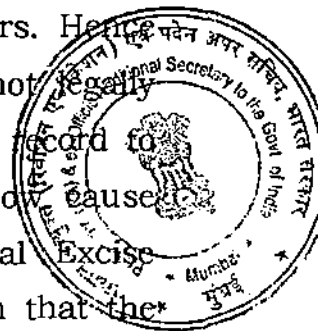
14. Government further observes that the reliance by the Commissioner (Appeals) in impugned order on the judgment of the Hon'ble Bombay High





Court in Union of India V/s Rainbow Silks -2011 (274) E.L.T. 510 (Bom.) and M/s Sheetal Exports – 2011 (271) ELT 461 (G.O.I) is misplaced in as much as in the case of Rainbow Silks show cause notice was issued to the manufacturer supplier i.e. the processor alleging therein credit has been taken based on invoices issued by bogus and fictitious firm; there was a clear admittance that, the processor had not received the grey fabrics from the supplier but had received it through exporter-assessee. In the other case of M/s Sheetal Exports relied upon by the Commissioner (Appeals), claims filed by merchant exporter were rejected on the ground that, the merchant exporter had purchased the goods from a manufacturer who was found to have no manufacturing activity and the duty paying documents were found to be bogus on investigation. As against the same, in the present case, the impugned Order has merely proceeded on presumption that, the Applicants may be a party to the fraudulent availment of credit, without any evidence to that effect, nor do records indicate anything to the effect that any show cause notice was issued to the applicant alleging bogus purchase or wrong availment of credit.. The facts in the present case, again are at variance with the aforementioned referred judgement relied upon by the Commissioner (Appeals).

15. Government observes that the documents submitted by the applicant at the time of personal hearing depict/support the entire co-relation of the transaction. The Range Superintendents of the department have certified the genuineness of the processors / grey manufacturers. It therefore follows that the duty paid by the processors M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd, is on the basis of credit accumulated from the duty paying documents supplied by the grey manufacturers. Hence denial of rebate based on presumptions and assumptions is not sustainable. Government also observes that there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders in original in this case by the Central Excise Commisionerate. Government therefore, is of considered opinion that the Order in Original No. 2558/11-12/DC(Rebate)/RGD dated 29.03.2012



passed by the Deputy Commissioner (Rebate) Central Excise, Raigad lacks appreciation of evidence and hence is unjustifiable.

16. Government observes that the benefit of rebate claim cannot be denied on the basis of 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 26-2-2010 in F. No. 195/130/2007-RA-CX in respect of M/s Sheetal Exports.

17. In view of discussions and findings elaborated above, Government is of the considered opinion that a detailed verification by the original authority into the allegations of alert Circulars is required to be carried out. Moreover, Government observes that "even if it is assumed, that the applicant paid duty on the goods to be exported, from the Cenvat account, wherein they have also availed inadmissible credit on the basis of bogus invoices issued by M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd, the rebate cannot be denied due to the fact that one to one co-relation between the duty payment and the Cenvat credit availed cannot be established, as the debit / payment of duty is made out of total Cenvat credit available in balance and the applicant has also availed Cenvat credit on the basis of invoices issued by suppliers other than M/s Bluechip Fabric Pvt. Ltd. & M/s Shankeshwar Fabrics Pvt. Ltd". This verification from the original authority is also necessary, to establish the genuineness of the Cenvat credit availed & subsequently utilized by the applicant for payment of duty towards the above exports. The applicant is also directed to submit relevant records/documents to the original authority in this regard.

18. In view of discussions and findings elaborated above, Government

(i) upholds the Order in Appeal No. US/757/RGD/2012 dated 01.12.2012 rejecting the rebate claim in respect of export under ARE-1 No. 3/2004-05 dated 18.10.2004 involving the duty amount of Rs. 1,76,103/- (Rupees One Lakh Seventy Six Thousand One Hundred Three Only) where the applicant has not followed the procedure as laid down in para 3(a)(xi) of the Notification No. 19/2004-CE(NT) dated 08.09.2004 and para 6.1 of the Chapter 8 of CBEC Manual, and

(ii) sets aside the Order in Appeal No. US/757/RGD/2012 dated 01.12.2012 rejecting the remaining four rebate claims for non-



furnishing the documentary evidence to prove the genuineness of the availment of Cenvat Credit and subsequent utilization by them for payment of duty and remands the case back to the original authority for denovo adjudication as stated at para 17 supra. The applicant is also directed to submit relevant records/documents to the original authority in this regard. The original authority will complete the requisite verification expeditiously and pass a speaking order within Eight weeks of receipt of said documents from the respondent

19. Revision application is disposed off in above terms.

20. So ordered.

*Ashok Kumar Mehta*  
31.10.18

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

ORDER No. 362/2018-CX (WZ) /ASRA/Mumbai DATED 31.10.2018.

To,  
M/s Atlas Export (India),  
122/123, Neelkanth Commercial Centre,  
Sahar Road, Andheri (East),  
Mumbai - 400 099.

**ATTESTED**

*S.R. Hirulkar*  
20.11.18  
S.R. HIRULKAR  
Assistant Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST & CX, Mumbai (West).
2. The Commissioner of CGST & CX, (Appeals), Mumbai-II.
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX Mumbai West Commissionerate.
4. M/s R.K. Sharma Associates Pvt. Ltd., 342, Sai Commercial Centre, Station Road, Govandi (East) Govand, Mumbai - 400 088.
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.

