



सत्यमेव जयते

**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. 198/18-23/WZ/2020
F. No. 198/06/WZ/2021

Date of Issue: 06.09.2023

36A-
ORDER NO. 370/2023-CX(WZ)/ASRA/MUMBAI DATED 28.09.2023 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 THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of GST & Central Excise, Surat,
GST & Central Excise Building,
Opp. Gandhi Baug, Chowk Bazar,
Surat - 395 001.

Respondents : M/s G.Tex Inc.,
G-4 & G-5, 'A' Wing, Tej Deep Plaza,
Opp. Surya Darshan tower, Ramchandra Nagar - 1,
Thane (West) - 400 602.
(New Address:- # 19 & 20, 2nd Cross, Nehru Nagar,
Seshadripuram, Bangalore - 560020.)
& Others.

Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the Orders-in-Appeal
bearing Nos. CCESA-SRT (APPEAL)/PS-006-011/2020-21
and CCESA-SRT/(APPEALS)PV-023/2021-22 dated
29.05.2020 and 06.10.2021, respectively, passed by the
Commissioner of CGST & Central Excise (Appeals), Surat.

ORDER

The subject Revision Applications have been filed by the Commissioner of CGST & Central Excise, Surat Commissionerate, (here-in-after referred to as 'the applicant/Department') against the two impugned Orders-in-Appeal dated 29.05.2020 and 06.10.2021, both passed by the Commissioner of CGST & Central Excise (Appeals), Surat. The Order-in-Appeal dated 29.05.2020 disposed of appeals filed by M/s G.Tex Inc., Thane (here-in-after referred to as 'M/s GTEX') and seven others, against the Order-in-Original dated 20.05.2011 passed by the Additional Commissioner, Central Excise & Customs, Surat - I. The second Order-in-Appeal dated 06.10.2021 disposed of an appeal filed by M/s GTEX against the Order-in-Original dated 31.03.2021 passed by the Assistant Commissioner, CGST & Central Excise, Division V, Surat. Government finds that the issue involved in the subject Revision Applications is the same and hence takes up both for being decided together.

2. Government finds that eight firms/persons, as appearing at Table - 1 below, chose to file appeals before the Commissioner (Appeals) resulting in the impugned Order-in-Appeal dated 29.05.2020. The Department vide the subject Revision Application has prayed that the said Order-in-Appeal dated 29.05.2020 be set aside, hence the details discussed below is limited to these eight firms/persons. The second Revision Application filed by the Department is with regards to Order-in-Appeal dated 06.10.2021 which held that interest should be paid to M/s GTEX on the amount of rebate paid as a result of Order-in-Appeal dated 29.05.2020.

3. Brief facts of the case are that M/s GTEX was a merchant manufacturer/exporter of fabrics. The fabrics so exported were manufactured on job work basis for them by M/s Jagdamba Dyeing & Printing Mills (P) Limited, Surat and M/s Shri Ramanuj Dyeing & Printing Mills, Surat (M/s RDPM). M/s GTEX, procured and supplied the grey fabrics used in the manufacture of the exported goods, to the said processors. The processors availed of the Cenvat credit of the duty indicated as paid on the grey fabrics and thereafter paid Central Excise duty on the processed fabrics when the same was cleared from their premises. M/s GTEX exported these fabrics and claimed rebate of the duty paid by the processors. An investigation carried out by the DGCEI, Ahmedabad revealed that the suppliers of grey fabrics and their

suppliers downstream existed only on paper and no duty paid goods were actually received or consigned by them. Investigations carried out indicated that these entities, including M/s Suryanarayan Textile (M/s ST) and M/s Narayan Silk Mills (M/s NSM), both registered as manufacturers of 'grey fabrics', had issued bogus/fake Invoices indicating payment of duty on grey fabrics and that the processors had availed Cenvat credit on the strength of such invoices, which was used to pay Central Excise duty on the fabrics of which the respondent finally availed rebate. The investigation so carried out led to a Show Cause Notice dated 27.05.2010 being issued to M/s GTEX and several others involved in the conspiracy. The said Show Cause Notice sought to -

- recover the rebate already sanctioned to M/s GTEX and also reject their pending rebate claims;
- recover erroneously availed Cenvat credit from M/s JDPM and M/s M/s RDPM;
- impose penalties on all the firms involved, including the ones above, and their partners/proprietors;

The original authority vide the Order-in-Original dated 20.05.2011 upheld the charges in the Show Cause Notice against M/s GTEX and confirmed the demand for the rebate of Rs.10,60,193/- already sanctioned to them and also rejected their pending rebate claims amounting to Rs.26,92,252/-. The Order-in-Original further held that Rs.4,74,118/- was recoverable from M/s RDPM towards erroneously availed Cenvat credit. Apart from the above, penalties were imposed by the original authority. The details of the eight firms/persons on whom penalty was imposed by the original authority and who also filed appeals before the Commissioner (Appeals), is tabulated below:-

TABLE - 1

Sr. No.	Name of firm/person penalized	Penalty imposed (Rs.)	Section/Rule under which penalty imposed	Alleged role for which penalty imposed
1	M/s GTEX	10,60,193/-	Section 11AC of CEA	Claim of inadmissible rebate
2	Shri Rajesh Jhanwar, Partner M/s GTEX	1,00,000/-	Rule 15 of CCR and Rule 26 of CER	Role played in M/s GTEX
3	M/s RDPM	4,74,118/-	Rule 15 of CCR and Rule 26 of Central Excise Rules, 2002 and	Availed Cenvat Credit on bogus Invoices and used to pay duty of which rebate claimed

			Section 11 AC of CEA	
4	Shri Satyanarayan Gupta, Partner of M/s RDPM	1,00,000/-	Rule 15 of CCR and Rule 26 of CER	Role played in M/s RDPM
5	M/s Suryanarayn Textile (M/s ST)	2,00,000/-	Rule 25 of CER	Bogus Grey mfr. who supplied invoice indicating payment of duty on grey supplied to processors
6	Shri Harnish Dhruv Kumar Joshi proprietor of M/s ST	1,00,000/-	Rule 15 of CCR and Rule 26 of CER	Role played in M/s ST
7	M/s Narayan Silk Mills (M/s NSM)	2,00,000/-	Rule 25 of CER	Bogus Grey mfr. who supplied invoice indicating payment of duty on grey supplied to processors
8	Shri Hiren Sanat Bhatt, proprietor of M/s NSM	1,00,000/-	Rule 15 of CCR and Rule 26 of CER	Role played in M/s NSM

4. Aggrieved, the above mentioned eight firms/persons filed appeals before Commissioner (Appeals), who vide the impugned Order-in-Appeal found that the jurisdictional officers had certified that duty paid goods were exported and that there was no charge of mutuality of interest or flow back of funds between M/s GTEX and the processors in the Show Cause Notice and hence rebate could not be denied to them; the Commissioner (Appeals) hence set aside the demand of the rebate already sanctioned and also held that M/s GTEX will be eligible to the rebate claims which was rejected by the original authority; penalties imposed on M/s GTEX and its partner Shri Rajesh Jhanwar were set aside. Further, the Commissioner (Appeals) found that M/s RDPM and its Partner Shri Satyanaryan Gupta had opted to settle their case under the SVLDR Scheme and held their appeals to be deemed as withdrawn. As regards, M/s ST and M/s NSM, the grey manufacturers, the Commissioner (Appeals) upheld the charges in the Show Cause Notice, however found that since there was no movement of goods, penalty under Rule 25 of the Central Excise Rules, 2002 could not be imposed and set aside the same. Further, the Commissioner (Appeals) also held that penalty was rightly imposed on the proprietors of M/s ST and M/s NSM under Rule 26 of the Central Excise Rules, 2002, however, he found that penalty under Rule 15 of the Cenvat Credit Rules, 2004 could not be imposed on them and hence proceeded to reduce the penalties imposed to Rs.50,000/- on each of them. The details of penalties as per the impugned Order-in-Appeal dated 29.05.2020 with respect to the said eight firms/persons who preferred appeals before the

Commissioner (Appeals) vis-à-vis the Order-in-Original 20.05.2011, is tabulated below:-

TABLE - 2

Sr. No.	Name of firm/person penalized	Penalty imposed by OIO dt. 20.05.2011 (Rs.)	Penalty as per OIA dtd. 29.05.2020 (Rs.)
1	M/s GTEX	10,60,193/-	NIL, penalty set aside
2	Shri Rajesh Jhanwar, Partner M/s GTEX	1,00,000/-	NIL, penalty set aside
3	M/s RDPM	4,74,118/-	Settled by SVLDRS
4	Shri Satyanarayan Gupta, Partner of M/s RDPM	1,00,000/-	Settled by SVLDRS
5	M/s Suryanarayn Textile (M/s ST)	2,00,000/-	NIL, penalty set aside
6	Shri Harnish Dhruv Kumar Joshi proprietor of M/s ST	1,00,000/-	Rs.50,000/-
7	M/s Narayan Silk Mills (M/s NSM)	2,00,000/-	NIL, penalty set aside
8	Shri Hiren Sanat Bhatt, proprietor of M/s NSM	1,00,000/-	Rs.50,000/-

5. Aggrieved, the Department has preferred the subject Revision Application against the Order-in-Appeal dated 29.05.2020 on the following grounds:-

(a) The Commissioner (Appeals) has failed to appreciate the facts that in the present case the merchant exporter i.e. the respondent is the purchaser of grey fabrics and shown the same as has been processed on job work basis from the processor; that however, grey fabric manufacturers who had issued invoices for supply of grey fabrics to the respondents, were found to have issued only invoices without physical movement of goods; that the grey fabrics covered under these invoices, were shown to have been supplied to the processor; that as grey fabrics were not supplied under the said invoices, the question of processing of said grey fabrics and subsequent export of resultant processed fabrics did not arise; that in this case, the processor had received only duty paid invoices not accompanied with grey fabrics and therefore invoices were procured only to avail CENVAT credit which was subsequently utilised for payment of duty on processed fabrics; that as CENVAT credit on the basis of such invoices was not admissible, the duty payment on processed fabrics utilising such credit was not valid and thereby, the processed fabrics exported by the respondent was to be considered as non-duty paid; hence

allowing rebate of duty shown to have paid on processed fabrics, was not correct; and relied upon the decision of the Hon'ble High Court of Bombay in the case of CCE, Mumbai -I vs Rainbow Silk and Anthr. [2011 (274) ELT 510 (Bom.)] in support of their argument;

(b) That the Commissioner (Appeals) had erred in not considering the settled position of law laid down by Hon'ble High Court of Gujarat in the case of Diwan Brothers Vs. Union of India (SCA No. 13931 of 2011) wherein the Hon'ble Court had held in para 9 that-

"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 non-existent, the petitioner cannot be claimed rebate merely on the strength of exports made."

That similar view had been taken by the Hon'ble High Court of Bombay in the case of CCE Mumbai-1 Vs. Rainbow Silk Anr. [2011 (274) ELT 510 (Bom.)] wherein the Hon'ble Court held that - Since there was no accumulation of Cenvat Credit validly in law, there was no question of duty being paid there from;

(c) That the Hon'ble Apex Court in the case of Omkar Overseas Ltd. (2003 (156) ELT 167 (SC)) had held that rebate should be denied in cases of fraud; that in the case of Sheela Dyeing and Printing Mills (P) Ltd. [2007 (219) ELT 348 (Tri-Mum.)] the Hon'ble CESTAT held that any fraud vitiates transaction that this judgment had been upheld by the Hon'ble High Court of Gujarat; that in the case of Chintan Processor [2008 (232) ECT 663 (Tr Ahm)], the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as under

"Once the supplier is proved non-existent it has to be held that goods 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."

That in similar case of Multiple Exports Pvt. Ltd., Government of India vide Order No. 668-686/11 CX dated 01.06.2011 had upheld the rejection of rebate claim by lower authorities and that this order was upheld by the Hon'ble High Court of Gujarat vide its order dated 11.10.2012 in SCA No. 98/12 with SCA No, 101/12, filed by the party;

(d) That once it had been established that the grey suppliers were fake/nonexistent/bogus, it was clear that they did not manufacture any grey fabrics but issued duty paid invoices only in order to facilitate the processors to avail Cenvat credit; that when the Cenvat credit availed by the said processors itself was wrong/fraudulent, the payment of central excise duty, made from the same by the said processor, on the fabrics, supplied to the merchant exporter was also invalid and it could not be said that duty was actually paid; that the amount which had been paid by the processor, as duty, against the said invoices, cannot be considered as 'duty and therefore, the rebate of such duty shown to be paid, was not eligible to the merchant exporter;

(e) That the finding of the Commissioner (Appeals) that when the export made by the respondent was not disputed at all, then rebate of duty, shown to have been paid on the processed fabrics could not be denied was not correct and against the basic principles of availment and utilization of Cenvat Credit; that when it had been established that Cenvat credit itself was availed wrongly by the processor without receipt of any grey fabrics, on the strength of duty paid invoices issued by the fake firms, then the duty shown to have been paid from such Cenvat credit could not be considered and hence even if there was no dispute on the export of goods, the duty paid nature of the goods was in dispute and in absence of any evidence, it had to be held that duty was actually not paid on the exported goods and hence the respondent was not eligible for any rebate; that similar view had been taken by Joint Secretary (RA), Govt. of India, in Order No. 152-153/14-CX dated 17.04.2014; that in the following cases, having similar facts and issue, the Hon'ble Commissioner (Appeals), Surat had rejected the appeals filed by the exporters and rejected the rebate claims filed by them:

- OIA No. CCESA SRT(APPEALS)/PS-662-664/2019-20 20.03.2020 in the case of M/s Jhawar International & Others;

- OIA No. CCESA SRT(APPEALS)/PS-677/2019-20 dated 20.03.2020 in the case of M/s Batra International;
- OIA No. CCESA-SRT(APPEALS)/PS-678-684/2019-20 dated 20.03.2020 in the case of M/s KLA Overseas & Others;
- OIA No. CCESA-SRT(APPEALS)/PS-690-691/2019-20 20.03.2020 in the case of M/s Vikram Knittex (P) Ltd. & Othrs'
- OIA No. CCESA-SRT(APPEALS)/PS-708/2019-20 dated 20.03.2020 in the case of M/s Supreme (India) Overseas Corporation;

In view of the above submissions, the applicant/Department has submitted that the impugned Order-in-Appeal dated 29.05.2020 is required to be set aside.

6. The Department/applicant vide the subject Revision Application against the Order-in-Appeal dated 06.10.2021 have reiterated their submissions made in the Application against Order-in-Appeal dated 29.05.2020 to the extent that the rebate claim was not payable as the same was obtained by fraud. It was further submitted that reliance placed by the Commissioner (Appeals) on the decision of the Hon'ble Supreme Court in the case of M/s Ranbaxy Laboratories and Circular dated 01.10.2002 was not proper as in the instant case the integrity of the manufacturer was in doubt and hence the decision was not squarely applicable to this case. They further submitted that they had filed a Revision Application against the Order-in-Appeal dated 29.05.2020. In view of the above, it was submitted that the Order-in-Appeal dated 06.10.2021, which allowed payment of interest on the delayed payment of rebate, be set aside.

7. The respondent, M/s GTEX filed their submissions with respect to the subject Revision Application against Order-in-Appeal dated 29.05.2020, wherein they submitted as under:-

(a) That they were a merchant exporter engaged in exporting of dyed/printed/processed fabrics and had exported the duty paid processed fabric, from the premises of process House and that prior to the export of the processed fabrics, they had submitted ARE-1 documents, with the range officer, who had verified the same and allowed the clearance of duty paid processed fabric from the premises of process house, for the purpose of export; that at the time of export ARE-1 document was again counter signed by the

Customs (Preventive) officer and physical export of goods under was allowed under various Shipping Bills; that further the Captain of the ship had issued Mate Receipt for the receipt of cargo on board the vessel;

(b) That there was no dispute on the following points:

- that they had physically exported the duty paid processed fabrics and various ARE-1s were duly signed by the customs officer and central excise officer;
- that foreign exchange remittance was received against all shipping Bills of export and hence export was not in dispute;
- that at the time of clearance of goods from the factory of process house, export documents ARE-1, commercial invoice, packing list etc. were verified and signed by Central excise officer;
- that the process House had paid the duty on the processed fabrics, under Central Excise invoice which was claimed as rebate by the merchant exporter;
- that the process House is doing the Job work of many Merchant exporter, hence process House is taking the CENVAT credit on the basis of invoices received for Grey fabrics, chemicals and other inputs and input service and Capital Goods;
- that under the central excise Law, CENVAT credit is a pool of credit and there is no one to one correlation of input credit and output liability;
- that the process house is doing job work for many supplier of Gray fabrics, hence availing CENVAT credit of various inputs, input services and capital Goods received in the factory;
- that the process House had maintained all statutory record i.e. RG23A Part -1, RG23A part-II, RG-1, Lot register, Central excise invoice, and had submitted monthly RT-12 returns; that the process House had maintained Lot register for receipt of Grey fabrics in factory and manufactured processed fabrics, recorded in RG-1 register and exported on the payment of excise duty by process house, under invoice and ARE -1 export documents;
- that duty paid by process house has been claimed as rebate by the Merchant exporter and payment of duty is not in dispute by process house; that if the CENVAT credit availed by the process house is in dispute than demand of recovery of CENVAT credit has to be raised on the process house, but no CENVAT credit was demanded, from process

- House; that at the time of export of processed fabric from the factory, the ARE 1 documents were signed by the Director of process House too;
- that the goods shown in the ARE - I was duly exported under various shipping Bills and mate receipt was issued by the shipping lines. Finally Bank realization Certificate was also received and submitted to the Assistant Commissioner of Division;
 - that before sanction of the rebate claim to the tune of Rs.10,60,193/- the officer had asked the duty payment certificate from the jurisdictional range superintendent of the process house who had supplied the duty paid goods and therefore the duty paid character of the processed fabrics was verified and found that export of duty paid fabrics was genuine;
 - hence the Commissioner (Appeals) has correctly sanctioned the remaining rebate claims on the basis of documentary evidence available;

(c) That from para 4 of the Show Cause Notice it was clear that manufacture and supplier of input (Grey fabrics), M/s - Axtron Tex Chem (1) Pvt. Ltd F-17, RICCO Ind. Area, Sirohi Road, Dist- Sirohi, Rajasthan had PAN based Central Excise Registration No. AAFCA4592HXM001, which was issued only after the verification of factory premises by the proper officer; that it was also clear from para 4 of the Show Cause Notice, that the said unit had surrendered their registration certificate and another verification was made when the unit was closed, hence no person and record was available; that there was no dispute that till the date factory was operating, it had paid duty on outward supply and filed their monthly RT- 12 return with the Department; that hence the allegation of department that the supplier was not in existence was erroneous and without any evidence on record;

(d) that in similar set of facts the Joint Secretary to the Government of India in the case of M/S. KRISHNA EXPORTS - Order No. 315/07 dated 18.05.2007 and M/s. Shree Sainath Impex - Order No. 65/11-CX dated 24.01.2011 had sanctioned the rebate claim for merchant exporter; that it was a settled position of law that judicial discipline should be followed as held by the Apex Court in the case of UOI vs Kamlakshi Financial Corporation Limited [1991 (55) ELT 433 (SC)] and also the decision of the Hon'ble High Court of Gujarat in the case of UOI Vs. D.P. Singh [2011(270) ELT 321(Guj.)] which was upheld by Hon'ble Supreme Court as reported in [2014(305) ELT A75(S.C.)];

(e) That from the Order-in-Original dated 20.05.2011 and para 7 of revision application it was clear that CENVAT Credit of Rs.19,37,374/- had been demanded from M/s. Jagdamba Dyg. & Ptg. Mills P. Ltd. and Rs.4,74,118/- from M/s. Shree Ramanuj Dyg. & Ptg. Mills, who had supplied them the processed fabrics on the payment of duty; that when CENVAT Credit amount had been demanded from the process house, then there was no dispute that finished goods exported by them had suffered duty twice, once initially when the goods were cleared on the basis of excise invoice and secondly the same amount had also been demanded as reversal of CENVAT Credit; that under the given circumstances and fact on record, their rebate claim should be sanctioned; that it also appeared that the disputed amount of CENVAT credit was Rs.24,11,492/- in the hand of process House, which had been recovered against the total rebate amount Rs.37,52,445/- (Rs 10,60,193/- + Rs 26,92,252/-) and hence the amount of rebate claim Rs 13,40,953/- (Rs 37,52,492/- - Rs 24,11,492/-) was towards CENVAT credit used by process house, which was never in dispute;

(f) That from the SCN, it was clear that after the completion of investigation, it was established that the supplier of Grey Fabrics were registered with the Central Excise department and were regularly filling the monthly ER - 1 return; that all the manufacturer of Grey Fabrics had plant and Machinery at their factory to manufacture Grey fabrics; that they had permanent PAN based registration; that Central Excise registration was allotted to weaver after verification of factory premises and hence the supplier of Grey Fabrics were genuine manufacturer and they were not fake and bogus; that the manufacturer of Grey fabrics and Dealer of Grey Fabrics had PAN based registration number; that before the issue of PAN based registration, verification of premises was mandatory by Range Superintendent vide Circular No. 662/53/2002-CX dated 17.09.2002 and 668/59/2002 dated 30.09.2002 and therefore Range superintendent of manufacturer of Grey fabrics, after verification of premises had submitted his verification report to divisional officer and only after that PAN based registration had been issued to the manufacturer of Grey fabrics; that they had in their appeal had asked for Cross Examination of range Superintendent who had submitted verification report and hence from the documentary evidence available on record, it could not be said that manufacturer of Grey Fabrics were not in existence;

(g) That in the present case, manufacturer of Grey fabrics as well as the process House both were registered with Central Excise department and availing CENVAT Credit on various inputs that the manufacturer of Grey Fabrics (weaver) and dealer of input and process house were in existence at the registered premises and followed all the provisions of Central Excise law and rules made there under; that the Hon'ble Supreme Court of India in the case of CCE Pune Vs. DAI ICHI KARKARIA LTD. [1999(122) ELT 353(SC.)] at para 17 held that there was no co-relation of the raw material and the final product, that is to say, it is not as if the Credit can be taken only on a final product that in manufacture out of the particular raw material to which the credit is related and that it meant that the amount of CENVAT Credit was pool of amount and duty on the finished goods had been paid out of that pool of CENVAT Credit; that if any manufacturer had availed any credit, which is not admissible than it can be recovered from him only and not from the person who has purchased the duty paid goods; that in the present case CENVAT credit has been demanded from the process house and also recovered and hence in no circumstance can their rebate be withheld after the export of duty paid goods;

(h) That the Orders-in-Original granting rebate indicated that the Customs Authority had verified the export documents and confirmed the genuineness of export; that the range officer had supplied the verification report for payment of duty and that rebate claim was sanctioned to them in September 2007 and that the same had attained finality as no appeal was filed by Department against this order;

(i) That the Annexure -D report indicates that the range Superintendent of the processors had verified the duty paid nature of finished goods, which has been exported by them and hence the finished goods which has been exported had suffered duty; they submitted monthly return for the month of December 2006, (as sample) for M/s SURABHI CORPORATION, Malegaon Nasik, submitted to range Superintendent which was evidence that Grey fabrics had actually supplied Grey Fabrics to them; that the statement recorded by DGCEI under pressure and threat and against the documentary evidence available on record, hence documentary evidence prevail over the statement and hence the rebate claim sanctioned should not be recovered from them;

(j) They submitted documents like Commercial Invoice, Bill of Lading, Form SDF, Shipping Bill, Mate Receipt, BRC in respect of their rebate claim of Rs.26,92,252/- and submitted that from the said documents proved the actual export of finished goods and that the Customs Authority had verified and put his seal and signature on documents; that in relation of export of finished goods were physically verified by Customs Authority and that BRC enclosed showed the realization of foreign exchange; hence export of finished goods was not in dispute, therefore rebate claim has be sanctioned by Commissioner (Appeal) Surat;

(k) That they had submitted all documents related to process of Grey fabrics and export of processed fabrics, were submitted before Commissioner (Appeal) and he had given his Order after appreciating all facts;

(l) that the Department had in the subject appeal had intentionally not considered the point that Process House had availed CENVAT credit based on the invoices issued by the supplier of Grey fabrics and that it was on record that CENVAT credit availed by Process House been demanded in SCN and after confirmation in order-in-original it has been recovered; that the merchant Exporter had claimed the rebate of duty paid by process House on the process fabrics; that there was no dispute that process house availed CENVAT credit of other inputs, chemicals and capital Goods also; that out the pool of CENVAT credit, he paid the duty on the Process fabrics, which was claimed as rebate; hence the payment of duty was not in dispute and they were eligible to the rebate;

(m) That in the Grounds of appeal a number of judgments was considered by the Department but the ratio of those judgments were not applicable to present case, because in this case CENVAT credit availed by process House, on the basis of invoices supplied by Grey manufacturer has been demanded and recovered from Process House; that in these circumstances if rebate is not paid to the exporter then it is double demand of tax on one and same processed fabrics.

In light of the above M/s GTEX submitted that the Departmental application be set aside.

8. Personal hearing in both the above cases was given on 16.05.2023, 22.09.2023 and 27.09.2023. No one appeared on behalf of the applicant. Shri Mukund Chauhan, Advocate appeared on behalf of M/s GTEX on 16.05.2023 and reiterated the points made in their reply. He further submitted that Cenvat credit had already been recovered from the process house. He submitted an additional written submission on the matter. He requested to maintain Commissioner (Appeals) Order.

8.1 The respondent vide their written submissions made during the personal hearing, apart from reiterating the points already made, they also submitted the following:-

(a) That M/s GTEX was a regular exporter of goods prior to the year 2005 and even today they had the status of star export house;

(b) That from para 7 of the Revision application submitted by revenue it was clear that that the department had recovered Cenvat Credit of Rs.19,37,374/- along with interest from the processors M/s JDPM and M/s RDPM and hence if rebate is not allowed it would amount to double collection of duty by the Government;

9. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Orders-in-Original and the impugned Orders-in-Appeal.

10. Government finds that the Show Cause Notice dated 27.05.2010 sought to recover the rebate already sanctioned to M/s GTEX as well as reject their claims which were pending disposal. Government finds that the events which led to the above Show Cause Notice are based on an investigation carried out by the DGCEI, Ahmedabad, wherein it exposed a syndicate consisting of several entities who issued fake/bogus Central Excise Invoices indicating payment of duty without any physical sale or purchase of grey fabrics or actual payment of Central Excise duty. The facts of the case are that M/s GTEX, a merchant exporter, had exported fabrics which they had got processed by M/s JDPM & M/s RDPM on job work basis. The grey fabrics used for processing the exported fabrics was procured by M/s GTEX from

various dealers and manufacturers of grey fabrics. M/s Satyanarayn Textiles (M/s ST) and M/s Narayan Silk Mills (M/s ST) being two such grey manufacturers, amongst several others, who supplied grey fabrics to the processors on behalf of M/s GTEX. It is the case of the Department that such grey fabrics were never supplied by the Dealers/manufacturers and only Central Excise Invoices indicating duty payment were sent to the processors and hence the Cenvat credit availed by them on such invoices was improper and the rebate claimed of the duty paid using such improper Cenvat credit cannot be allowed. Government finds that the original authority upheld the charges in the Show Cause Notice and held that the rebate already sanctioned was recoverable and rejected the pending claims. Penalties were imposed on amongst others, all the eight respondent firms/persons. Government finds that the said eight firms/persons, as detailed above, filed appeals before the Commissioner (Appeals) against the Order-in-Original. The Commissioner (Appeals) dropped the charges against M/s GTEX, the merchant exporter, and dropped the penalties against the grey manufacturers viz., M/s Satyanarayn Textiles and M/s Narayan Silk Mills, whilst reducing the penalties on their proprietors. The processor M/s RDPM and its partner, having settled their case under SVLDRS, their appeals were treated as withdrawn. The Department aggrieved by the Commissioner (Appeals) order has filed the subject Revision Application seeking to set aside the same.

11. Government has examined the Order-in-Original wherein the entire investigation carried out by the DGCEI has been elaborated and the modus operandi of the syndicate exposed. Government finds that several firms viz. Parth Impex, M/s ST and M/s NT were created by the said syndicate; and all these firms obtained registration either as 'Dealers' or 'manufacturers' of grey fabrics with the Central Excise Department. Investigations clearly reveal that these registrations were obtained fraudulently and were based on forged documents. It was only when the all the firms starting from the merchant exporter, processors and downstream suppliers of grey fabrics were investigated together was the conspiracy exposed. These bogus dealers/manufacturers issued Central Excise invoices indicating payment of Central Excise duty on grey fabrics to several other firms as well as amongst themselves, without actual supply of goods or payment of duty in the first

place. These invoices were used either by 'Dealers' or the 'Processors' to avail or pass on Cenvat credit. The Cenvat Credit so availed was used to pay duty when the goods were indicated as sold to a processor/exporter. The role of the all the firms/persons involved, including those who preferred appeals before the Commissioner (Appeals) who have been mentioned above, has been laid bare by the investigation carried out. Government notes that M/s GTEX had, in the capacity of a merchant exporter, indicated purchases from such 'Dealers/manufacturers' who issued such fake/bogus invoices without supply of grey fabrics or payment of duty. Investigation carried out revealed that the job-workers/processors of M/s GTEX had availed Cenvat credit on the strength of such fake/bogus Central Excise invoices issued by the said 'Dealers and manufacturers of grey fabrics' which in turn was used by them to pay duty on the goods shown as sold to M/s GTEX who finally claimed rebate of such duty claimed to have been paid by the job workers/processors.

12. Government has examined the evidences gathered during the investigation. Statements of various persons who perpetuated the fraud were recorded and they have admitted that the chain of transactions, beginning with the fraudulent 'Dealers', who issued the bogus/fake invoices and leading to the merchant exporter M/s GTEX, were only paper transactions and that in these cases neither were any goods supplied nor was any duty paid. Documents withdrawn during the course of searches carried out at premises M/s Parth Impex, the main supplier of grey fabrics and registered as a 'Dealer' with the Central Excise authorities a registered Dealer clearly brings out the enormity of the entire fraud. Blank Invoices books of their supplier of grey fabrics were found along with blank LR's of the Transport Company whose challans were forged to indicate transport of grey fabrics. The transport documents were either non-existent or were found to be forged. The owners/persons in charges of these grey fabric suppliers have admitted that it was the proprietor of M/s Parth Impex who prepared all the documents including the Invoices indicating payment of Central Excise duty and that they did not manufacture or supply any grey fabrics. The transactions between these fraudulent firms indicate that the duty indicated as paid in the bogus/fake invoices was finally encashed when the rebate of the same was claimed, in the present case by M/s GTEX. The banking transactions

examined during the investigation indicate that all parties involved were beneficiaries to the fraud. The fraudulent dealers and manufacturers of grey fabrics were found to have obtained registrations on the strength of bogus/fake/forged lease agreements and the premises were found to be either vacant or occupied by other units. Investigations also indicated that the payment made by the applicant to such entities was routed back to them through shroffs/cheque discounting agents.

13. Government finds that the Partner/s of the job workers/processors have admitted that they neither had any system of physical verification of the goods supplied by such entities nor could they co-relate the invoices and the grey fabrics covered by it. On being confronted with the evidence collected during investigation, the partner of the merchant exporter had admitted that such grey manufacturers could not have existed and hence could not have manufactured any grey fabrics. Further, Government finds that the partners of the job worker/processors, viz. M/s JDPM and M/s RDPM and also the partner of M/s GTEX have in their statements before the Central Excise authorities, when confronted with the statements and other evidence collected during the investigation, have admitted that the firms who supplied grey fabrics, could not have paid Central Excise duty on the grey fabrics purportedly supplied to them. Government notes that M/s GTEX had claimed rebate of the duty paid by their job workers/processors on the final products alleged to have been manufactured out of such non-duty paid grey fabrics. Government finds that the proprietors of M/s ST and M/s NSM have in their statements recorded before the officers, admitted that they had not purchased any yarn and had availed Cenvat credit of yarn on the basis of forged invoices; they further admitted that never manufactured or supplied grey fabrics at any point of time.

14. Government finds that the investigation carried out has placed on record irrefutable evidence to indicate that M/s GTEX and others who filed appeals before the Commissioner (Appeals), along with others hatched a conspiracy to defraud the Government exchequer; they orchestrated a fraud by fabricating fake/bogus invoices indicating payment of Central Excise duty, which, through series of paper transactions reached the processors/job

workers who then availed Cenvat credit of duty which was never paid and M/s GTEX as the merchant exporter proceeded to claim rebate of the same. Government finds that M/s GTEX played a vital role in the entire fraud as it was them who finally encashed the duty shown to have been paid by the fake/bogus invoices. Government finds M/s GTEX to be guilty on several counts; they have shown purchases from non-existent entities; they have shown supplies to their job workers without receiving any material from their suppliers and had in turn made available fake/bogus invoices on the basis of which their job-workers availed Cenvat credit and used it pay Central excise duty of which they claimed rebate; and finally were part of the financial racket wherein the illicit gains were shared by all the entities involved. M/s GTEX cannot deny their complicity in the creation of such fake paper transactions and fabrication of transport documents. Government finds that M/s GTEX played an integral part in this fraud which was perpetuated with the sole intention to avail/encash Cenvat credit on the strength of bogus/fake invoices fabricated by the syndicate. Government finds that the investigation, details of which has been discussed above, clearly indicate that M/s GTEX has colluded with the others in the syndicate with the intent to defraud the Government and in the process has suppressed facts and filed rebate claims by willfully misstating that proper duty was paid on the exported goods.

15. In view of the above, Government finds that M/s GTEX had fraudulently availed rebate in the subject case and such amounts claimed by them need to be recovered and the demands raised by the Show Cause Notice seeking to recover such rebate deserves to be confirmed and accordingly holds so. Government find that the Commissioner (Appeals) in the impugned Order-in-Appeal dated 29.05.2020 has erred in finding that since the fabrics were exported and the fraudulent suppliers were granted Central Excise registration, M/s GTEX would be eligible to the rebate claimed by them. As stated above, Government finds that it was only after a comprehensive investigation was carried against the whole syndicate, did the fraud perpetuated at multiple levels stood exposed. Government finds that it would be impossible for a Range officer to detect that the finished goods placed before him for export were manufactured out of grey fabrics which had not suffered Central Excise duty in the normal course. Further, Government notes that it

would be near impossible for an officer to predict while granting Central Excise registration to the grey fabrics dealers/manufacturers that the same was being obtained for the purpose of perpetuating such fraud. Government finds that it is only with the benefit of details thrown up by the investigation conducted across the entire group of firms involved in the conspiracy was the fraud exposed and it would be near impossible to detect the same when the exposure of an officer is limited to one firm. Thus, Government finds that the grounds on which the Commissioner (Appeals) held that M/s GTEX will be eligible for the rebate claimed, to be incorrect. Thus, in view of the above, Government finds that the demand of rebate already sanctioned to M/s GTEX amounting to Rs.10,60,193/- deserved to be confirmed and their pending rebate claims of Rs.26,92,252/- deserved to be rejected and accordingly holds so. Government also restores the penalties of Rs.10,60,193/- and Rs.1,00,000/- imposed on M/s GTEX and its partner Shri Rajesh Bhanwar, respectively by the original authority. Government sets aside the order of the Commissioner (Appeals) in the impugned Order-in-Appeal dated 29.05.2020 on this count and orders for recovery of the rebate amount sanctioned to M/s GTEX along with appropriate interest.

16. Government finds that M/s GTEX has sought to place reliance on judgments of various Courts wherein it was found that the exporter who had claimed the rebate was neither a part of the racket nor was aware of the fraud perpetuated by the entities down-stream. The facts are different in the present case, as the investigation carried out by the Department clearly proves that M/s GTEX was not only aware of the fraud being perpetuated but also played a vital role in the same. Government finds that in cases having similar set of facts the GOI in the case of M/s Sheetal Exports [2011 (271) ELT 461 (GOI)] and M/s Jhawar International [2012 (281) ELT 460 (GOI)] it was held that the exporter was not eligible to the rebate claimed as the transactions between them and their suppliers were found to not bonafide as the suppliers were found to be fake and bogus. Further, Government finds support in the following decisions of the Hon'ble High Courts wherein facts of the cases are similar to the present case:-

- UOI vs Rainbow Silks [2011(274) ELT 510 (BOM)]

- Sheela Dyeing and Printing Mills [2008 (232) ELT 408 (GUJ)]
- Multiple Exports [2013 (288) ELT 331 (GUJ HC)]
- Diwan Brothers 2014 (309) ELT 244 (GUJ)

Government finds that in all these cases, the Hon'ble High Courts have held that that exporter was not entitled to rebate unless it was proved that the input supplier had paid duty on the very goods which were supplied by them. Government finds that in present case the evidence presented by the investigation in the Show Cause Notices make it abundantly clear that no Central Excise duty was paid on the inputs used to manufacture the final products exported by M/s GTEX and hence they would not be eligible to claim rebate on such exports.

17. Government finds that the Commissioner (Appeals) has treated the appeals filed by the processor M/s Ramanuj Dyeing & Printing Limited and its proprietor Shri Satyanarayan Gupta as withdrawn as they had settled their cases under the SVLDR Scheme. Government does not find any fault with this decision of the Commissioner (Appeals) and upholds the same.

18. Lastly, Government finds that the Commissioner (Appeals) found that M/s Suryanarayan Textile and M/s Narayan Textile Mills were guilty of the charges against them as held by the original authority, however, the penalties against them were reduced. The Commissioner (Appeals) has set aside the penalty imposed on both the said firms under Rule 25 of the Central Excise Rules, 2002 for the reason that the said Rule prescribed penalty for removal of goods in contravention of the provisions contained in the said Rules and in this case, as alleged by the Show Cause Notice there was no movement of grey fabrics at all. Government finds that it is pertinent to examine Rule 25 of the Central Excise Rules, 2002 at this point and the same is reproduced below:-

"25. Confiscation and penalty

(1) Subject to the provisions of section 11 AC of the Act, if any producer, manufacturer, registered person of a warehouse ²[or an importer who issues an invoice on which CENVAT credit can be taken,] or a registered dealer, -

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or

(b) does not account for any excisable goods produced or manufactured or stored by him; or

(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty,-

then, all such goods shall be liable to confiscation and the producer or manufacturer or registered person of the warehouse ³[or an importer who issues an invoice on which CENVAT credit can be taken,] or a registered dealer, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in clause (a) or clause (b) or clause (c) or clause (d) has been committed, or⁴[five thousand rupees], whichever is greater.

(2) An order under sub-rule (1) shall be issued by the Central Excise Officer, following the principles of natural justice."

A reading of the above extract indicates that sub clause (d) of clause (1) of the said Rule 25 provides for imposition of penalty in all those cases, wherever the provisions of these rules or the notifications issued under these rules have been contravened with the intent to evade payment of duty. In the present case, as discussed above, the firms M/s Suryanarayan Textile and M/s Narayan Textile Mills, had fraudulently obtained Central Excise Registration on the basis of fake agreements, availed Cenvat credit on the basis of bogus invoices and also issued Central Excise invoices indicating payment of Central excise duty and consigning grey fabrics to the processor without actually receiving yarn or consigning such grey fabrics. The proprietors have admitted to such fraud in their statements before the Central Excise officers. Thus, Government finds that they contravened several provisions of the Central Excise Rules, 2002 and have hence rendered themselves liable for penalty under Rule 25 of the Central Excise Rules, 2002. In view of the above, Government finds that the Commissioner (Appeals) has erred on this count and has erroneously set aside the penalties imposed on them by the original authority and hence sets aside this portion of the Order-in-Appeal dated 29.05.2020. Consequently, Government restores the penalty of Rs.2,00,000/- imposed on M/s Suryanarayan Textile and Rs.2,00,000/- on M/s Narayan Textile Mills under Rule 25 of the CER, 2002 by the original authority.


19. Further, Government finds that the Commissioner (Appeals), has found that penalty under Rule 15 of the Cenvat Credit Rules, 2004 will not be applicable for imposition of penalty on the proprietors of M/s Suryanarayan Textile and M/s Narayan Textile Mills and has proceeded to reduce the penalty of Rs.1,00,000/- imposed on each of them under Rule 15 of the Cenvat Credit Rules, 2004 and Rule 26 of the Central Excise Rules, 2002, to Rs.50,000/-. Government finds that the Commissioner (Appeals) has not given any reason for the above said finding. On examining Rule 15 of the Cenvat Credit Rules, 2004, Government finds that it provides for imposition of penalty on any person who takes, avails or utilizes Cenvat Credit by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made thereunder with the intent to evade payment of duty. Government finds that, as found above, the proprietors of M/s Suryanarayan Textile and M/s Narayan Textile Mills are admittedly guilty of all the above reasons cited in Rule 15 of the Central Excise Rules, 2002, thus rendering them liable for penalty under the said Rule. Thus, Government finds that the Commissioner (Appeals) erred in reducing the penalties imposed on Shri Harish Dhruv Kumar Joshi, proprietor of M/s Suryanarayan Textile and Shri Hiren Sanat Bhatt, proprietor of M/s Narayan Textile Mills. In light of the above, Government restores the penalty of Rs.1,00,000/- each on both the said persons as imposed by the original authority. Government finds that the Commissioner (Appeals) has also held that it is not justifiable to impose penalties on the proprietors when penalties have been imposed on their respective firms. In this context, Government finds that penalties imposed on the proprietors and their respective firms are under different Rules of the Cenvat Credit Rules, 2004 and the Central Excise Rules, 2002 and hence are for different contraventions and hence the apprehension expressed by the Commissioner (Appeals) on this count will not hold good.

20. Government finds that the second Revision Application has been filed by the Department against the Order-in-Appeal dated 06.10.2021, wherein the issue involved is limited to the payment of interest on the delay in the sanction of the rebate found payable to M/s GTEX as a result of the impugned Order-in-Appeal dated 29.05.2020. Government finds that the Commissioner

(Appeals) has in the Order-in-Appeal dated 06.10.2021 held that interest is payable in such case. Government finds that while the Commissioner (Appeals) has interpreted the legal provisions correctly, he has erred that interest in this case needs to be sanctioned as, in view of the discussions above, the sanction of rebate by the Commissioner (Appeals) in the impugned Order-in-Appeal dated 29.05.2020 itself has been found to be incorrect. Thus, Government finds that since the decision of the Commissioner (Appeals) to allow the pending claims to be sanctioned to M/s GTEX itself was erroneous, the question of payment of interest on its delayed payment does not arise and hence sets aside the Order-in-Appeal dated 06.10.2021. Thus, the Revision Application filed by the Department against Order-in-Appeal dated 06.10.2021 succeeds.

21. In view of the above, Government holds that the amounts of Rs.10,60,193/- erroneously sanctioned to the M/s GTEX earlier and the pending rebate claims of Rs.26,92,252/- which were sanctioned to M/s GTEX in compliance of the impugned Order-in-Appeal dated 29.05.2020, are required to be recovered along with appropriate interest. The impugned Order-in-Appeal dated 29.05.2020 stands modified to this effect.

22. The subject Revision Applications are disposed of in the above terms.


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

ORDER No. ³⁶⁴⁻ 370 /2023-CX (WZ) /ASRA/Mumbai dated 28.09.2023

To,

Commissioner of CGST & Central Excise, Surat,
GST & Central Excise Building, Opp. Gandhi Baug,
Chowk Bazar, Surat - 395 001.

Copy to:

1. M/s G.Tex Inc., G-4 & G-5, 'A' Wing, Tej Deep Plaza, Opp. Surya Darshan tower, Ramchandra Nagar - 1, Thane (West) - 400 602.

- (New Address:- # 19 & 20, 2nd Cross, Nehru Nagar, Seshadripuram, Bangalore - 560020.)
2. Shri Rajesh Brij Vallabh Jhanwar, Partner of M/s G.Tex Inc., G-4 & G-5, 'A' Wing, Tej Deep Plaza, Opp. Surya Darshan tower, Ramchandra Nagar - 1, Thane (West) - 400 602.
(New Address:- # 19 & 20, 2nd Cross, Nehru Nagar, Seshadripuram, Bangalore - 560020.)
 3. Shri Ramanuj Deying & Printing Mills, Plot No.6, Block No.31, B/H Garden Vareli Silk Mill, Village Vankaneda, Kadodara, Dist. Surat.
 4. Shri Satyanarayan Gupta, proprietor of Shri Ramanuj Deying & Printing Mills, Plot No.6, Block No.31, B/H Garden Vareli Silk Mill, Village Vankaneda, Kadodara, Dist. Surat.
 5. M/s Suryanarayan Textile, Plot No.192, Morar Industrial Estate, Surat Bardoli road, Village Jolwa, Palsana, Dist - Surat.
 6. Shri Harnish Dhruv Kumar Joshi, Proprietor of M/s M/s Suryanarayan Textile, Plot No.192, Morar Industrial Estate, Surat Bardoli road, Village Jolwa, Palsana, Dist - Surat.
 7. M/s Narayan Silk Mills, Plot No.192, Morar Industrial Estate, Surat Bardoli road, Village Jolwa, Palsana, Dist - Surat.
 8. Shri Hiren Sanat Bhatt, Proprietor of M/s Narayan Silk Mills, Plot No.192, Morar Industrial Estate, Surat Bardoli road, Village Jolwa, Palsana, Dist - Surat.
 9. The Commissioner of Central Excise, (Appeals), Surat, 3rd floor, Magnus Mall, Althan Bhimrad Cana Road, Near Atlantis Shipping Mall, Althan, Surat - 395 017.
 10. M/s MKC Legal, Advocate & Solicitors, 731, 7th floor, Ajanta Shopping Centre, Near Metro Tower, Ring Road, Surat, Gujarat - 395002.
 11. Sr. P.S. to AS (RA), Mumbai.
 12. Notice Board