F.No. 195/1467/12-RA

SPEED POST
REGISTERED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANACE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/1467/12-RA/ 1203 Date of Issue: 22.02.2018

ORDER NO. 36/2018-CX (WZ) /ASRA/MUMBAI DATED 20.02.2018 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. Soflene Textiles Private Limited

Respondent : Commissioner of Central Excise, Customs, & Service Tax, Raigad

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal US/514/ RGD/ 2012 dated 23.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai.

ORDER

This revision application is filed by M/s. Soflene Textiles Private Limited (hereinafter referred to as "the applicant") against the Order-in-Appeal US/514/ RGD/ 2012 dated 23.08.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II with respect to the Order-in-Original No. 1839/11-12/DC (Rebate)/Raigad dated 18.01.2012 passed by the Deputy Commissioner of Central Excise (Rebate), Raigad.

2. Brief facts of the case are that the applicant had filed an appeal against order-in-original No. 1839/11-12/DC (Rebate)/Raigad dated 18.01.2012 passed by Deputy Commissioner, Central Excise(Rebate) Raigad rejecting 3 (Three) rebate claims totally amounting to Rs. 5,36,831/- on the ground that the exported goods were fully exempt under Notification No.30/2004-CE dated 9.7.2004 and in view of sub-section (1) of Section 5A of the Act read with CBEC Circular No.937/27/2010-CX dated 26.11.2011, the applicants could not have paid duty and did not have the option to pay the duty. The adjudicating authority further observed that Chapter sub heading Number of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills does not tally, the FOB value is less than the assessable value declared in the ARE-1, the procedure required for self-sealing and self-certification given in para 6.1 of the Notification No. 19/2004-CE(NT) dated 06.09.2004 have not been followed and also observed that the appellant had failed to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit on the inputs used in the exported fabrics.

3. Vide impugned Order-in-Appeal, the Commissioner (Appeals), upheld order-in-original No. 1839/11-12/DC (Rebate)/Raigad dated 18.01.2012 passed by Deputy Commissioner, Central Excise (Rebate), Raigad on same grounds mentioned in impugned Order and rejected the appeal filed by the applicant.

4. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act,

1944 before the Government on the various grounds as enumerated in their application. Main grounds of appeal are follows:

4.1 As regards rejection of the rebate claims on account of FOB value of the goods was less than the assessable value, they had explained that the amount of Central Excise duty paid on the goods exported under claim of rebate was reduced from the FOB value since they were seeking rebate of the same from the department. Hence, the FOB value was lesser to the extent of the Central Excise duty paid on the goods exported. Central Excise duty has not been paid on the Freight and Insurance portion

4.2 They are engaged in the manufacture and sales of manmade fabrics. As an exporter, M/s. Soflene Textiles Private Ltd. manufactured grey fabrics out of duty paid inputs (yarn). Since they were availing the benefit of the CENVAT Credit scheme, they maintained elaborate records of the receipt of the yarn and used the yarn for weaving grey fabrics. Thereafter the grey fabrics were sent for processing and for this activity they have followed the procedure laid down under the CENVAT Credit Rules 2004. We have sent the grey fabrics under 4(5) A challans for job work and conversion into processed fabrics and these fabricswere received back in our factory, checked for quality and packed appropriately and subsequently cleared for export under invoices and ARE-1s. The department has never harboured any dispute regarding the export of goods since proper proof to that effect was produced by us.

4.3 Further, vide letter F No. V(15)Rebate/Soflene/Rgd/05 dated 06.03.2006, verification of genuineness of the duty paying documents was caused. The duty payment was verified by the Superintendent having jurisdiction over the applicant's registered manufacturing premises under F No. CEx/RIV/Pdn/Soflene/07 dated 15.03.2007. Copies of both these letters were enclosed herewith as Annexure D-1 and D-2 to EA-8 Application.

4.4 Immediately on receipt of the letter dated 07.02.2006, they submitted clarifications for the technical shortcomings pointed out in the letter and filed a reply on 31.03.06. It was impressed upon the authorities that the discrepancies were purely technical in nature and does not in any way alter the factual position relating to export of goods. In fact, in addition to the clarifications sought in the letter, the Maritime Commissioner had also caused inquiries with the jurisdictional officer having charge over our factory to verify the genuineness of the payment of duty details submitted by us while submitting the claims for rebate. They submit that the records of receipts of raw materials (yarn) and the corresponding CENVAT credit of the duty paid on the yarn purchased for manufacturing the Grey fabrics which were processed and subsequently exported were all made available to the jurisdictional Range Superintendent. The Superintendent Range IV Palghar Division Thane II Commissionerate, after checking the records available at their factory and after fully satisfying himself of the genuineness of the duty payments, informed the Maritime Commissioner vide his letter F No. CEx/RIV/Pdn/Soflene/07 dated 15.03.2007 about genuineness of the payment of duty by them in respect of the three rebate claims. This letter is enclosed as Annexure D-2 to EA-8 Application. Under the circumstances there was no scope of doubt about the genuineness of the transactions involving the exports for which the rebates were claimed.

4.5 Thereafter they had made correspondence with the Maritime Commissioner requesting for early sanction of our rebate claims. We had vide letters dated 25.10.2008, 18.08.2009, 10.12.2009, 24.10.2010, 26.04.2010 requested the Maritime Commissioner of Central Excise Raigad for early processing and sanction of the pending rebate claims. Further, vide letter dated 27.04.2011 and 06.06.2011 requests were made before the Chief Commissioner Mumbai Zone II to intervene in the matter and expedite sanction of the claims.

4.6 They had vide letter dated 30.12.2011, reiterated their stand and clarified all the points including the issue relating to notification 30/2004 CE dated 09.07.2004 and pointed out that the exemption would be available only in case CENVAT credit was not availed as was mentioned in the notification and also submitted a copy of the said notification with the relevant portion duly marked and highlighted. Also, Invoices and the RG-23 A part I and II registers maintained by us incorporating the details of purchase of inputs and the input CENVAT credit were also produced before the Deputy Commissioner Rebate to prove that the goods exported were manufactured out of inputs / raw materials on which CENVAT credit of the duty paid on purchase of raw materials was tabulated. Copies of the letters dated 20.12.2011 and 30.12.2011 are enclosed herewith as Annexures H1 and H2 to EA-8 Application.

4.7 The other reason for rejection of the claims by the Maritime Commissioner was the absence of certificate of self-sealing and supervision of the ARE-1. The Commissioner Appeals has have stated that "*the appellants have now submitted the certificates on our letter head. I find that there is the mandatory requirement to give certificate on the ARE-1 and the certificate on the letter head after the lapse of considerable time cannot be accepted at this stage*". In this context they draw attention to the ARE-1 no 18 dated 05.08.2005 wherein the self-certification and sealing and declaration was mentioned on the face of the ARE-1 itself. Self-attested photo-copy of the ARE-1 no 18 dated 05.08.2005 is enclosed herewith as Annexure C-3 to this appeal for your kind perusal. It was further stated that vide letter dated 31.03.2006, which was submitted by them in response to the Maritime Commissioner's letter dated 08.02.2006, they had submitted the required declaration to the Maritime Commissioner. A copy of this letter is enclosed herewith as Annexure C-2 to EA-8 Application from this letter it is amply clear that the declaration was submitted

by the applicant at the initial stage itself and not after considerable time as mentioned erroneously by the Commissioner Appeals. They had submitted the triplicate / quadruplicate and quintuplicate copies of the respective ARE-1 for the counter signature of the Range staff within 24 hours of the export of the goods and with it the payment of duty was also got verified. From these facts it is amply clear that there was no intention to circumvent the procedure and it was a technical lapse that the declaration remained to be mentioned in the ARE-1 no 15 & 16. They submit that it is settled law that substantive benefit cannot be denied for procedural infractions and that claims cannot be denied merely on procedural / technical lapses.

4.8 In support of their contention they cite a few of such judgments as mentioned below.

(i) IN RE : ACE Hygiene Products Private Ltd [2012 (276) ELT 131 (G.O.1)]

(ii) IN RE : Alcon Biosciences Private Ltd [2012 (281) ELT 732 (G.O.1)]

(iii) IN RE : Sanket Industries Ltd [2011 (268) ELT125 (G.O.I)]

(iv) IN RE : Leighton Contractors (India) Private Ltd [2011 (267) ELT 422 (G.O.1)]

(v) IN RE : Commissioner of Customs & Central Excise Nagpur [2006 (200) ELT 175 (G.O.I)]

They submit that the issue of procedural irregularities itself is no more res-intergra since the very same issue has been settled in favour of the assessee by the Govt. of India in Krishna Filaments Ltd., 2001 (131)E.L.T. 726, wherein it was held that mere non-filling of declaration showing consumption, ratios were procedural and non-substantive enough to deny the rebate claim.

4.9 The Commissioner Appeals has quoted the procedure as appearing at para 8.4 of the CBEC Manual of Departmental Instruction and also mentioned that the Commissioner Central

Excise Raigad Commissionerate also issued departmental instructions for proper verification of the rebate claims and has simply stated that:

> *"the rebate sanctioning authority was not satisfied about the duty paid character of the exported goods and had given an opportunity to the appellants to produce evidence for verification of the genuineness of the CENVAT credit availed on the inputs but the appellants has failed to produce any evidence either before him or me"*

On the basis of this statement the Commissioner Appeals erroneously concluded that the rejection of rebate claims cannot be faulted and upheld the order of the Maritime Commissioner. In this context they submit that they are in possession of elaborate records pertaining to the purchase of inputs, receipt and utilization in the factory for manufacture of goods which were exported or cleared on payment of duty. They state that they have never been charged with in-correct payment of duty in respect of any of our clearances for local (home) consumption or for our numerous export clearances. Further the Maritime Commissioner as a part of our system of verification of genuineness of the duty payment had caused verification of the duty paid by the applicant through the Range Superintendent having jurisdiction over the applicant's factory and the duty payments were duly verified and received back by them. In addition they had produced the RG23 A Part I and II records maintained in the factory wherein the details of the input documents are entered. The exported goods were manufactured out of the duty paid inputs entered in the RG 23 A Part I and II registers maintained for the purpose. Self attested copies of invoices were submitted to the Maritime Commissioner vide the applicant's letter dated 31.12.2011. This fact finds mention in the order of the Maritime Commissioner and an acknowledgement for submission of records evidencing input stage

credit submitted to the Commissioner Appeals is also available and is enclosed as Annexure H-3 to EA-8 Application.

4.10 In view of the facts and circumstances as mentioned hereinabove, the Commissioner Appeals erred in concluding that the rejection of the rebate claims cannot be faulted on this aspect. The Commissioner Appeals failed to take into consideration the fact that there exists proof of genuineness of input stage credit even though there was ample proof of the same by way of verification of duty payment by the Range Superintendent, submission of copies of duty payment documents before the Maritime Commissioner and thereafter submission of the registers and the input invoices before the Commissioner Appeals himself. On these very grounds the appellants feel that the order of the Commissioner Appeals needs to be striken down and the applicant's genuine claims of rebate be allowed.

4.11 They accept the fact that there might have been deviations from the set procedure but also wish to point that there exists plausible explanation for the same. They submit that the deviation does not in any way negate the fact of export and the receipt of foreign exchange and it is for the earnings of foreign exchange that the rebate is available to the exporter in the first place. Hence in view of the clear intent and guidelines in this regard it is requested that the claim ought to be sanctioned on this ground itself.

4.12 In addition to the above facts, the applicant would like to submit that there are many decisions where it is held that procedural irregularities are condonable when the "factum of export is not disputed". In the instant case also there has never been a dispute about the export of goods. However, the rebate has been sought to be denied on the basis of condonable procedural irregularities. The Government of India in its revisionary jurisdiction has also held that the procedural lapses are condonable in the interest of export promotion and rebate claims have been allowed. The applicant

seeks to place reliance on the following decisions of the Government of India:

a) 1999 (111) ELT 295 (G01) IN RE: M/s. Allanasons [Annexure H-1]

b) 2001 (131) ELT 726 (G01) IN RE: M/s. Krishna Filaments Ltd. [Annexure H-2]

c) 1994 (074) ELT 468 (G01) IN RE: M/s. GTC Export Ltd. [Annexure H-3] d) 1991 (054) ELT 319 (G01) IN RE: M/s. MRF Ltd. [Annexure H-4]

e) 2000 (115) ELT 855 (G01) IN RE: M/s. Mandhana Industries Ltd. [Annexure H-5]

f) In Union of India v. A. V. Narasimhalu - 1983 (13) E.L.T. 1534 (S.C.), [Annexure H-6] the Apex Court also observed that the administrative authorities should instead of relying on technicalities, act in a manner consistent with the broader concept of justice.

g) In the matter of M/s. Cotfab Exports, [Annexure H-7] the Revisionary Authority held that: "In fact, it is now a trite law that the procedural infraction of Notifications/circulars etc. are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacture and subsequent export. As long as this requirement is met, other procedural deviations can be condoned".

In additional to the above submissions they also wish to bring to kind notice two more case laws, the ratio of which are squarely applicable in our case too.

1. IN RE : Banaras Beads Ltd as reported in 2011 (272) E.L.T. 433 (G.O.I.)

2. Ford India Private Ltd. Versus Assistant Commissioner of Central Excise Chennai as reported in 2011 (272) E.L.T. 353 (Mad.)

They are enclosing copies of these decisions for your information and ready reference.

4.13 In view of the above submissions they pray that the Order in appeal no. US/514/RGD/2012 issued under F No. V2(A)160/RGD/2012/4353 on 23.08.2012, passed by the Commissioner of Central Excise (Appeals), Mumbai Zone II should be set aside as the same is legal, proper or correct and allow us the rebate claim of Rs. 5,36,831/- which is rightfully due to us at the earliest.

5. A Personal hearing was held in this case on 29.12.2017 and Shri Mukesh Tulsiani, Director appeared for hearing and reiterated the submission filed through Revision Application and also reiterated the written submissions filed through their letter dated 29.12.2017. He undertook to provide copy of all earlier rebate claims sanctioned by the department within 4 days.

In view of the submissions he pleaded that Order-in-Appeal be set aside and instant Revision Application be allowed.

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

(i) FOB value being lower than the assessable value;

(ii) The absence of certificates of self sealing and supervision on the ARE-1s ; and

(iii) The applicants did not produce evidence of the genuineness of the Cenvat Credit availed on inputs used in the exported fabrics.

8. As regards rebate claims in certain ARE-1s held inadmissible on account of FOB value on the lower side when compared with assessable value shown on the Central Excise Invoices, Government observes that in the instant case, the applicant has contended that FOB price was inclusive of excise duty paid and since they were to claim rebate of duty paid by them the FOB price was reduced to that extent. At para 10 (c) of their additional submissions dated 29.12.2017, the applicant contended that

> *"In this context we had explained that the amount of Central Excise duty paid on the goods exported under claim of rebate was reduced from the FOB value since we were seeking rebate of the same from the department. Hence the FOB value was lesser to the extent of the Central Excise duty paid on the goods exported. This fact can be adequately verified from the table below.*
>
> *In view of the facts as tabulated hereinabove, the reason for the difference in the FOB value and the assessable value appearing in the invoice are adequately explained. Central Excise duty has not been paid on the Freight and Insurance portion".*

However, Government observes that no such tabular data is appearing in the applicant's additional submissions dated 29.12.2017 and hence the contention of the applicant cannot be verified at this stage. However, Government notes that the law in this regard is settled that the excise duty on the exported goods has to be paid on transaction value as defined under Section 4(3)(d) of the Central Excise reiterated in Re: Maral Overseas Ltd. 2012(277) ELT 412 (GOI). CBEC vide their Circular No. 203/37/96-CX.,

dated 26-4-96 have also clarified that AR4 value should be determined under Section 4 of the Central Excise Act, which is required to be mentioned on the invoices issued .

9. As regards Self Certification and Self sealing procedure, Government observes that Government of India vide Order No. 10/2016-CX dated 15.01.2016 while upholding the order of the Commissioner (Appeals) and rejecting the Revision Application filed by the assessee on similar grounds observed that

- *as per Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 ibid, the manufacturer exporter registered under Central Excise Rules, 2002 and merchant exporter who procure and export goods directly from the factory or warehouse can exercise an option of exporting the goods sealed at the place of despatch by a Central Excise Officer or under self sealing.*

- *where the exporter desires self sealing and self certification for removal of goods from the factory the owner, working partner or Managing Director among others of the manufacturing unit shall certify on all copies of ARE-1 that the goods have been sealed in his presence and shall distribute the various copies as prescribed including to the jurisdictional Superintendent or Inspector of Central Excise within 24 hours of removal of goods.*

- *from a plain reading of the above provisions it is clear that if goods are cleared from a factory for export under claim for rebate it has to be under the cover of an ARE-1 duly certified for purpose of identity of goods either by the Superintendent/Inspector or the person from the factory as the case may be. This duly verified/certified ARE-1 is then certified by the Customs after due verification/examination that goods have been exported and the verification on ARE-1 prior to clearance from factory and thereafter by the Customs at the time of export helps to establish that the goods which were cleared from the factory are the same which are exported and without having followed the procedure as described in the Notification it cannot be established that goods which were cleared from factory were the ones actually exported or goods exported cannot be correlated with goods cleared from factory.*

- *that the nature of above requirement is both a statutory condition and mandatory in substance which also finds support in various judgments of the Apex Court and also noted that Hon'ble Supreme Court in case of*

Sharif-ud-Din, Abdul Gani-(AIR 1980 SC 3403) has observed that distinction between required forms and other declarations of compulsory nature and/or simple technical nature is to be judiciously done. When non-compliance of said requirement leads to any specific/odd consequences, then it would be difficult to hold that requirement as non-mandatory. It is a settled issue that benefit under a conditional notification cannot be extended in case of non-fulfillment of conditions and/or non-compliance of procedure prescribed therein as held by the Apex Court in the case of Government of India Vs. Indian Tobacco Association 2005 (187) ELT 162 (S.C.); Union of India Vs. Dharmendra Textile Processors 2008(231) ELT 3 (S.C.). Also it is settled that a Notification has to be treated as a part of the statute and it should be read along with the Act as held by in the case of Collector of Central Excise Vs. Parle Exports (P) Ltd - 1988(38) ELT 741 (S.C.) and Orient Weaving Mills Pvt. Ltd. Vs. Union of India 1978 (2) ELT J 311 (S.C.) (Constitution Bench).

10. While refuting the reliance placed by the applicants on the various judgments regarding procedural relaxation on technical grounds, Government in its Order No. 10/2016-CX dated 15.01.2016 observed that

- *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 in its Order No. 10/2016-CX dated 15.01.2016 further observed as under:

- *Government notes that it is an undisputed fact on record that in the present case the goods have been cleared by the applicant from the factory of Manufacturer on invoices only between 19.04.2007 to 23.04.2007 and dispatched to JNPT Container Terminal for stuffing. They had prepared the ARE-1 only on 24.04.2007 subsequent to clearance from the factory after the complete consignment was received at JNPT. It was only signed by Customs officials and the triplicate copy was submitted to the jurisdictional Superintendent of Central Excise on 18.02.2008. The impugned goods were thus cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under serf-sealing and self-certification procedure. The conditions and procedure as laid down under Notification No. 19/2004-CE(NT) dated 06.09.2004 for sealing of goods at the place of dispatch were not followed. Correlation can therefore not be said to have been established as to whether the goods that were cleared from the factory, were the same as those exported.*

12. In the context of the aforesaid judgment, which has decided the issue of requirement of *self sealing and self certification for removal of goods from the factory* for export, the applicant's contention that it was a technical lapse that the declaration remained to be mentioned in the ARE-1 no 15 & 16 (Rebate Claims No. 24378 & 24379) and further that it is settled law that substantive benefit cannot be denied for procedural infractions and that claims cannot be denied merely on procedural / technical lapses, is unacceptable.

13. In view of the foregoing, Government observes that the impugned goods were cleared from the factory without an ARE-1 bearing certification about the goods cleared from the factory either under excise supervision or under self-sealing and self-certification procedure and therefore the conditions and procedure of sealing of goods at the place of dispatch were not followed and therefore the correlation between the goods cleared from the factory and those exported cannot be said to have been established.

14. Government, therefore, holds that non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004 – CE(NT) dated 06.09.2004 cannot be treated as minor procedural lapse for the purpose of availing benefit of rebate of duty on impugned export goods. Therefore, the various judgments relied on by the applicant regarding procedural relaxation on technical grounds as well as applicant's plea about treating this lapse as procedural one cannot be accepted.

15. As regards non production of evidence of the genuineness of the Cenvat Credit availed on inputs used in the exported fabrics Government notes that the original authority in Order-in-Original No. 1839/11-12/DC (Rebate) / Raigad dtd.18.01.2012 observed that

During the period to which the subject rebate claims relate, the Directorate General of Central Excise Intelligence (DGCEI) and Central Excise authorities had detected several cases of nonexistent / bogus firms who were purportedly either supplying grey fabrics or processing grey fabrics; such firms applied for & got Central Excise registration without having any facility for manufacture sometimes even imaginary address; such firms started issuing bogus / fake cenvatable invoice with the sole intention of passing fraudulent / bogus Cenvat Credit . During the course of DGCEI investigation it was further revealed that these nonexistent / bogus grey fabrics suppliers had merely supplied duty paying documents, i.e. cenvatable invoices on commission basis without supplying any grey fabrics to the grey processors with the intention to pass on fraudulent / bogus Cenvat Credit. Subsequently, without proper verification of genuineness of invoice received from the grey fabrics supplier, the processors availed the Cenvat Credit on the bogus / fake invoices issued by nonexistent grey fabrics suppliers & utilized the said bogus credit for payment of central excise duty on exports goods." As a consequence of the fraud detailed above, alert lists were issued by several investigative agencies such as Directorate

General of Central Excise Intelligence and local Central Excise & Customs Preventive Formations."

16. Government observes that as the alerts had been issued regarding bogus Cenvat Credit having been availed on bogus invoices related to textiles during the material period, the original authority asked the applicant to provide documents / records regarding the processing of the grey fabrics used in the export products as it was necessary that the duty paid nature of the export goods in the subject rebate claims is ascertained by correlating the said goods with the grey fabrics used therein and the yarn used in the grey fabrics. However, original authority observed in the Order in Original that the applicant merely submitted copies of few invoices of yarn purchased by them with the grey fabrics and resultant processed fabrics produced and exported by them and therefore, the genuineness of the Cenvat credit availed on inputs used in the export fabrics could not be verified due to non submission of the relevant records by the claimant.

17. Government observes that the applicant in its additional submissions dated 29.12.2017 at para 11 has stated that the Maritime Commissioner as a part of their system of verification of genuineness of the duty payment had caused verification of the duty paid by the applicant through the Range Superintendent having jurisdiction over the applicant's factory and the duty payments were duly verified and received back by them. In addition they had produced the RG 23 A Part I and II records maintained in the factory wherein the details of the input documents are entered. The exported goods were manufactured out of the duty paid inputs entered in the RG 23 A Part I and II registers maintained for the purpose. Self attested copies of invoices were submitted to the Maritime Commissioner vide the applicant's letter dated 31.12.2011. This fact finds mention in the order of the Maritime Commissioner and an acknowledgement for submission of records evidencing input stage credit submitted to the Commissioner (Appeals) was also available and was enclosed as Annexure H-3 to EA-8 Application. In view of the facts and circumstances as mentioned hereinabove, the

Commissioner Appeals erred in concluding that the rejection of the rebate claims cannot be faulted on this aspect. The Commissioner Appeals failed to take into consideration the fact that there exists proof of genuineness of input stage credit even though there was ample proof of the same by way of verification of duty payment by the Range Superintendent, submission of copies of duty payment documents before the Maritime Commissioner and thereafter submission of the registers and the input invoices before the Commissioner Appeals himself. On these very grounds the appellants feel that the order of the Commissioner Appeals needs to be striken down and the appellants genuine claims of rebate be allowed.

18. In this regard Government notes that the applicant had obtained Cenvat debit verification letters after clearances were made. But the subsequent investigations of DGCEI, Central Excise formations had proved that there is a fraud at grey stage duty payment and the accumulation of credits at processors/finished product manufacturer's end. Government also notes that it is a fact that due investigations were indeed done by the DGCEI/Central Excise authorities and the proper authorities have conclusively proved that in such cases are "frauds" involving fake/fictitious identities. Thus the correspondences issued earlier to the investigations cannot be treated as authentic unless duty paid nature of the export goods in the subject rebate claims is ascertained by correlating the said goods with the grey fabrics used therein and the yarn used in the grey fabrics".

19. 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 Gujrat, 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.)], filed by party has upheld the above said GOI Revision order dated 01-06-2011. Government also observes that 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 fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."*

20. In view of discussions and findings elaborated above, Government holds that the Rebate Claims No. 24378 & 24379 dated 20.10.2005 are not admissible to the applicants for non observations of the conditions and procedure of self-sealing as provided in the Notification No.19/2004 – CE(NT) dated 06.09.2004.

21. Government further holds that Rebate claim No. 26572 dated 18.11.2005 is admissible to the applicant in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/04-CE(NT) dated 06.09.04 subject to detail verification by original adjudicating authority of the duty paid nature of the export goods by correlating the said goods with the grey fabrics used therein and the yarn used in the grey fabrics" and also considering the Orders issued by the DGCEI/Central Excise authorities. The applicant is also directed to submit relevant records/documents to the original authority in this regard. The original authority is also directed to verify the contention of the applicant that FOB price was inclusive of excise duty paid and since they were to claim rebate of duty paid by them the FOB price was reduced to that extent and thereafter to determine of value of

exported goods in terms of Section 4 of Central Excise Act, 1944 to arrive at the admissible Rebate amount.

22. In view of the above, Government remands the case back to original authority to decide the Rebate claim No. 26572 dated 18.11.2005 afresh in view of above observations for sanctioning of the claimed rebates, after due verifications of documents as detailed above, after affording reasonable opportunity and pass well reasoned order within eight weeks from the receipt of this order.

23. Revision applications are disposed of in terms of above.

24. So ordered.

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

ORDER No. 36 /2018-CX (WZ) /ASRA/Mumbai DATED 20.02.2018

True Copy Attested

To,

M/s. Soflene Textiles Private Limited,
Plot No. 9 S.No. 39/1, Aliyali Village,
Taluka, Palghar-401014

26.2.18

एस. आर. हिरूलकर
S. R. HIRULKAR
CAC-RA)

Copy to:

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