

SPEED POST  
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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

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

F. No. 198/02/WZ/2021 / 7239  
F. No. 198/05/WZ/2021

Date of Issue: 06.09.2023

ORDER NO. <sup>373-374</sup> /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.
- Respondent : M/s JKP International,  
C/o Pravin Uchil, 31/968/Jankidevi CHS.,  
Vartak Nagar, Thane (W), Maharashtra- 400 606.
- Subject : Revision Applications filed under Section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
bearing Nos. CCESA-SRT (APPEALS)/PS-177/2020-21  
and CCESA-SRT/(APPEALS)PS-021/2021-22 dated  
25.02.2021 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 GST & Central Excise, Surat Commissionerate, (here-in-after referred to as 'the applicant/Department') against the two impugned Orders-in-Appeal dated 25.02.2021 and 06.10.2021 passed by the Commissioner of CGST & Central Excise (Appeals), Surat. The said Orders-in-Appeal disposed of appeals filed by M/s JKP International, Thane (here-in-after referred to as 'the respondent') against the Orders-in-Original dated 12.01.2021 and 30.03.2021, both passed by the Assistant Commissioner, CGST & Central Excise, Division V, Surat. Government finds that the issue involved in the said Revision Applications is the same and hence takes up both for being decided together.

2. Brief facts of the case are that the respondent was a merchant manufacturer/exporter of fabrics and had filed rebate claims totally amounting to Rs.8,06,096/- in respect of fabrics exported by them on payment of Central Excise duty. The fabrics so exported were manufactured on job work basis for the respondent by M/s Shree Jagdamba Dyeing & Printing Mills, Surat. During the course of verification of the rebate claims, details of input stage invoices were called for from the respondent. The details submitted by the respondent indicated that M/s Axtron Tex Chem (I) Limited, Rajasthan had issued Cenvatable invoices in the name of the respondent and had consigned the grey fabrics to their job worker - M/s Jagdamba Dyeing & Printing Mills, Surat (M/s JDPM). The job worker, M/s JDPM had availed Cenvat credit of the Central Excise duty indicated as paid by M/s Axtron Tex Chem (I) Limited. The original authority on the strength of the report of the Superintendent having jurisdiction over the manufacturer/supplier of the grey fabric to the job worker of the respondent, concluded that this supplier was non-existent/fake/bogus and proceeded to hold that the Cenvat credit availed by M/s JDPM on the strength of such non-existent supplier was incorrect and not available to them. On the basis of this observation, the original authority held that the respondent would not be eligible to claim the rebate of the duty paid by M/s JDPM using such ineligible credit and proceeded to reject the rebate claim filed by the



respondent vide Order-in-Original dated 15.02.2012. Thereafter, the present case has gone through several rounds of litigation and the details of the same are as under:-

- The respondent filed appeal against the same before Commissioner (Appeals) who vide Order-in-Appeal dated 24.01.2020 remanded the case to the original authority for fresh decision;
- The original authority vide Order-in-Original dated 29.09.2020 once again rejected the claim of the respondent;
- The respondent preferred an appeal leading to Order-in-Appeal dated 20.11.2020 wherein the Commissioner (Appeals) once again remanded the case back to the original authority;
- The original authority once again rejected the rebate claim vide Order-in-Original dated 12.01.2021;
- Aggrieved, the respondent filed appeal with Commissioner (Appeals) who vide the impugned Order-in-Appeal dated Order-in-Appeal dated 25.02.2021 allowed the rebate claims filed by the respondent;
- The Department, aggrieved by the impugned Order-in-Appeal has filed the subject Revision Application seeking to restore the Order-in-Original denying the rebate claimed by the respondent.
- In the meanwhile, based on the impugned Order-in-Appeal dated 25.02.2021 the rebate claim was paid to the respondent vide Order-in-Original dated 30.03.2021, however, their claim for interest on the delayed payment was denied on the grounds that the same was paid within three months of the said Order-in-Appeal;
- The respondent preferred appeal against the said Order-in-Original resulting in impugned Order-in-Appeal dated 06.10.2021 vide which the Commissioner (Appeals) held that interest was payable on the expiry of three months from the date of receipt of the rebate applications initially filed by the respondents.
- The Department vide one the subject Revision Applications has challenged this Order-in-Appeal dated 06.10.2021, too.

3.1 The Revision Application against the Order-in-Appeal dated 25.02.2021 has been preferred on the following grounds:-

(a) That the Commissioner (Appeals) had failed to appreciate that grey fabrics were not supplied to the job-worker of the respondent and hence the question of the fabrics being processed and exported did not arise particularly because the grey manufacturer was found to be fake and bogus; that hence the finding of the Commissioner (Appeals) on this count was not correct and against the basic principles of availment and utilization of Cenvat credit; that when the duty paid nature of the grey fabrics was in doubt, rebate should not have been allowed 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 holding that the entire verification against the grey fabrics manufacturer is nothing but presumptions and assumptions; as the facts regarding issuance of letter dated 18.03.2011 and reply received from the jurisdictional Range Superintendent of the grey manufacturer were very well available on record at the material time and thus mere non-availability of these documents after a lapse of 14 years cannot be termed as the Range Superintendent had not issued such letter and that it cannot be held that the grey manufacturer was genuine and had supplied the grey fabrics; that the DGCEI had found that M/s G Tex (who was earlier situated at the address of the applicant) was found to have shown that they too had procured grey fabrics from such bogus suppliers; that hence the integrity of the respondent was in doubt and that the Range Superintendent further reported that the unit did not have a good track record; that the grey manufacturer should have come forward and prove their bonafides which they failed to do and were hence not genuine and hence the Commissioner (Appeals) finding that the Order-in-Original was based on presumptions was not correct;

(c) That the Commissioner (Appeals) had failed to conduct inquiry as provided for by Section 35A(3) of the Central Excise Act, 1944 and also in



terms of instructions issued by the Board under F.No.275/34/2006-CX 8A dated 25.07.2008 and had merely remanded the case back earlier and had now allowed the appeal of the respondent, which was incorrect;

(d) That the Commissioner (Appeals) had incorrectly relied on the Order dated no.304-307/2007 dated 18.05.2007 of the GOI as in this case the applicant was actively involved in passing on Cenvat credit without actual supply of fabrics and was hence involved in the fraud committed;

(e) That the Commissioner (Appeals) failed to consider the settled position of law that fraud vitiated everything and relied upon the decision of the Hon'ble Supreme Court in the case of CC vs Candid Enterprises [2001 (150) 404 (SC)];

(f) That the Commissioner (Appeals) erred in holding that the said grey manufacturer was in existence at the material time and hence transactions between the grey manufacturers and suppliers were bonafide and genuine in view of the Range superintendent report that the grey manufacturer had surrendered their registration and did not have a good track record; that the respondent failed to produce documentary evidence to establish the movement of grey fabrics from the grey manufacturer to processor and the movement of processed fabrics from the processor to the port of export; that hence the transactions between the processor and applicant was not genuine and hence the Commissioner (Appeals) had erred on this count;

(g) That the Commissioner (Appeals) had erred in holding that the respondent were in no way concerned with the grey manufacturer as they had obtained only invoices without getting any physical grey fabrics; that it was a settled legal position that the admissibility of Cenvat credit was on the manufacturer and in this case since no dutiable grey fabrics were received by the manufacturer as the grey manufacturer was non-existent the grey fabrics used by the manufacturer cannot be said to of duty paid nature; the cited several decisions in support of their argument;

(h) That the Commissioner (Appeals) erred in not considering several decisions cited by them which laid down that rebate should be denied in cases of fraud and cited several decisions in support of their argument;

(i) That the Commissioner (Appeals) had erred in finding that registration given to the grey manufacturer was only after visiting the factory and after physical verification was conducted by the jurisdictional officer and hence registration granted itself proves that the said grey manufacturer was genuine; that the said findings was given only on the basis of assumptions and presumptions as the grey manufacturer was exempted from physical verification of the premises to which Central Excise Registration was granted.

In view of the above submissions, the applicant/Department had submitted that the impugned Order-in-Appeal dated 25.02.2021 is required to be set aside.

3.2 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 25.02.2021 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 had been filed against the Order-in-Appeal dated 25.02.2021. 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.

4. The respondent filed their submissions with respect to the subject Revision Application against Order-in-Appeal dated 25.02.2021, 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;

(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 the processor M/s Jagdamba Dyg. & Ptg Mills had availed CENVAT Credit on the basis of invoice issued by M/s Axtron Tex Cham (1) Pvt. Ltd and for other supplier of grey fabrics also that the process house was still running his business at same premises that the export documents were duly signed by the process house at the time of export of processed fabrics and the duty paid by process house was claimed as rebate hence there is no dispute that processed fabrics had suffered duty; they relied upon the decisions of the Joint Secretary to the Government of India in the case of M/S. KRISHNA EXPORTS - Order No. 315/07 dated 18.05.2007 (copy enclosed) and M/s. Shree Sainath Impex - Order No. 65/11-CX dated 24.01.2011 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 their rebate claim of Rs. 8,06,096/- was denied by the Division officer and sanctioned by Commissioner (A); that the details of ARE-3 number and date was mentioned in the Show Cause Notice; they furnished copies of the relevant documents to prove the actual export of finished goods, and that the Customs Authority had verified and put his seal and signature on the relevant documents; they further submitted all the documents related to process of Grey fabrics and export of processed fabrics, which they had submitted before Commissioner (Appeal); that the Commissioner (Appeals) had after appreciating such evidence had decided the case in their favour;

(f) That the Department in the subject Revision Application had sought to rely on several judgments, however, the ratio of those judgments were not applicable to the present case as in this no demand has been raised to recover the CENVAT credit availed by process House on the basis of invoices supplied by the grey manufacturer.

In light of the above the respondent submitted that the Departmental application be set aside.

5. 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 the respondent on 16.05.2023 and reiterated the points made in their reply. He further submitted that no evidence was produced against them while denying rebate by the original authority which has been rightly corrected by the Commissioner (Appeals). He further submitted that the issue of wrong availment of Cenvat credit, if any, by supplier of goods (Process House) is an independent matter for which action should have been taken against the suppliers. He requested to maintain the Order of the Commissioner (Appeals). He further made additional written submissions.

5.1 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 the Commissioner (Appeals) had at para 10 to 19 has considered the submissions made by them and had observed that the supplier of grey fabrics was in existence at the material time and that they had delivered the goods under the cover of Central Excise Invoice in the year 2007 and that at the time the verification of duty payment was conducted under Annexure-D verification by the proper officer, that however nothing to this effect was placed on record; that the verification letter was issued on 18.04.2011 when the factory had already closed down and the registration surrendered; that the said letter dated 18.04.2011 was never supplied to them even after being specifically demanded and the same was not available on record; that the Director of the process house had in statement confirmed the receipt of the grey fabrics from the supplier under payment of duty and that the same was entered in the statutory registers at the material time and hence the Show Cause Notice was based on assumptions and presumptions. In view of the above, they once again requested that the impugned Order-in-Appeal be upheld and the subject application of the Department be set aside.



6. 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.

7. The facts of the case are that the respondent, a merchant exporter, had exported fabrics which they had got processed by M/s Shree Jagdamba Dyeing & Printing Mills (M/s JDPM) on job work basis. The grey fabrics used for processing the exported fabrics was manufactured by M/s Axtron Tex Chem (I) Limited (M/s ATCIL) and the same was supplied by the respondent to the processor directly from M/s ATCIL. It is the case of the Department that such grey fabrics were never supplied by M/s ATCIL and only Central Excise Invoices indicating duty payment were sent to M/s JDPM and hence the Cenvat credit availed by M/s SJDPM 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 present case has gone through several rounds of litigation. The rebate claimed by the respondent was denied by the original authority leading them to file an appeal before the Commissioner (Appeals) who had then remanded the case back to the original authority for fresh decision. In denovo proceedings, the original authority once again rejected the rebate claims vide Order-in-Original dated 12.01.2021 which was challenged by the respondent resulting in the impugned Order-in-Appeal dated 25.02.2021 wherein the Commissioner (Appeals) has allowed the rebate claims of the respondent.

8. Government finds that the Department has challenged the impugned Order-in-Appeal dated 25.02.2021 primarily on the grounds that no grey fabrics were supplied to the processor as the manufacturer of grey fabrics was found to be fake and bogus and had only issued invoices without supplying any goods and hence the question of the said fabrics being processed and subsequently exported did not arise. The Department has contended that the Commissioner (Appeals) had erred in holding that the

entire verification against the grey fabrics manufacturer was nothing but assumptions and presumptions as –

- the letter from the jurisdictional Range Superintendent of the grey manufacturer was available at the material time;
- that DGCEI had initiated inquiry against M/s G.Tex who were found to have bogus suppliers, had the same address as the respondent, thus the integrity of the respondent was in doubt;
- that the jurisdictional Range Superintendent had reported that the unit did not have a good track record and was under a cloud;
- that if the grey manufacturer was genuine, they should have come forward before the original authority and cleared the charges levelled against them; and they were not genuine as the same was not done;
- That the Commissioner (Appeals) had erred in not conducting inquiry with the jurisdictional Range Superintendent or any other person, as required under Section 35A(3) of the Central Excise Act, 1944 and instructions of the Board vide its letter dated 25.07.2008;
- The GOI Order dated 18.05.2007 was erroneously relied upon by the Commissioner (Appeals) as in this case the respondent was actively involved in the fraud to encash Cenvat credit as rebate;
- That the Commissioner (Appeals) had erroneously held that the grey manufacturer was in existence at the material time as the jurisdictional Range Superintendent had reported that they had surrendered their registration and the track record of the grey supplier was under a cloud;
- That the respondent had failed to produce documentary evidence to establish the movement of grey fabrics from its manufacturer to the processor and thereafter the processed fabrics from its manufacturer to the port of export; that hence the findings of the Commissioner (Appeals) was incorrect;
- That the Commissioner (Appeals) had erred in holding that registration was given to the grey manufacturer after physical verification was conducted by the jurisdictional officer which proved that the grey manufacturer was in existence;



At the onset, Government finds that the application filed by the Department does not cite even a shred of evidence which corroborates the claim that the grey fabrics were not supplied to the job worker of the exporter. Government finds that the entire case of the Department has been made out on the strength of two letters, one dated 18.03.2011 from the Superintendent having jurisdiction of the manufacturer/job worker and another one purportedly from the Superintendent having jurisdiction of the supplier of grey fabrics. Government finds that it is a fact that copies of neither of these two letters were supplied to the respondent. It is also a fact that copies of neither of these letters are now available with the Department.

9. Government finds that the contents of the letter dated 18.03.2011 mentioned above, has been reproduced in the Order-in-Original dated 12.01.2021 and it does not support the case of Department in any way. In fact, Government finds that the same states that the grey manufacturer i.e. M/s ATCPL had supplied the grey fabrics under Cenvatable Invoices to the job worker/processor and that the processor had taken Cenvat credit on the basis of these invoices. Government finds that this letter actually supports the contention of the respondent that duty paid grey fabrics were supplied by M/s ATCPL to their job worker and negates the contention of the Department that M/s ARCPL was non-existent. As regards the second letter from the Superintendent having jurisdiction over the grey manufacturer, Government finds that the whole case of the Department that the grey manufacturer was non-existent/bogus, the Invoices issued were fake, no material was supplied, the track record of the supplier was under cloud, etc. is totally based on the contents of the said letter. Government finds that apart from a copy of this letter not being available at any stage, the Department right from the Show Cause Notice till these proceedings have failed to mention any details of the said letter viz. its number, date, etc. Government finds that the original authority has made contradictory findings on this count which has been pointed out by the Commissioner (Appeals) in the impugned Order-in-Appeal. The relevant portion of the Commissioner (Appeals) is reproduced below:-

11. *I find that the appellant have been asking these two letters/report from the department/adjudicating authority since the issuance of show*



*cause notice but the same have not been supplied to them till now. The adjudicating authority has said in the impugned order that "As a long span of period has already been lapsed, almost a period of decade. Moreover, meanwhile, office premises have shifted thrice since then, therefore in spite of all out efforts the records are not-traceable". Regarding letter of Superintendent of Central Excise, Abu Road, Dist. Sirohi, Rajasthan, the adjudicating authority has stated in the order that nowhere there is any mention that the Superintendent, Central Excise & Service Tax, Abu Road inform through letter; that if it had been the case the letter No. as well as date could have been mentioned along with reference. In other words, the adjudicating authority has stated that no such letter was received. Such type of findings are not acceptable in legal proceedings/quasi-judicial proceedings. If any document is being relied upon in the case and the person, against whom charges are framed, demands the same, it has to be provided to him otherwise the non-supply thereof amounts to violation of principles of natural justice. In the instant case, it is not forthcoming from the show cause notice as to how the report has been received from the Superintendent, Central Excise, Sirohi. If the said letters/report are not available on record, as is evident from the findings of the adjudicating authority himself, then the whole case is liable to be set aside on this ground alone. On one hand, the adjudicating authority is taking decision in the matter of rebate claims of the appellant which is raised on the basis of these documents only but on the other hand, he is saying that these are not available on record. Thus, it can be concluded that the whole case is made on the basis of assumption and presumptions only without having any evidences.*

Government finds these findings of the Commissioner (Appeals) to be proper and correct as the original authority has himself conceded that the letter from the Superintendent having jurisdiction over the grey manufacturer, did not exist. As stated earlier, the entire case of the Department is built on the alleged contents of the said letter, which is now admittedly non-existent, and hence all the allegations of the Department against the grey manufacturer who supplied the material to the job worker of the respondent will be mere hearsay. Government finds the contention of the Department, that the grey manufacturer did not have a good track record and was under a cloud, to be frivolous as the same is not backed by any evidence and notes that rebate cannot be denied on the basis of such unsubstantiated allegations.

10. Government finds that applicant/Department in this case has limited themselves to casting aspersions on the genuineness of supply of duty paid grey fabrics by its manufacturer without adducing any evidence to support



such claim. Government finds the submission of the applicant/Department that the Commissioner (Appeals) should have conducted an independent inquiry under Section 35A(3) of the Central Excise Act, 1944 to be preposterous, as the burden of collecting the evidence to support the allegations lies on the investigating authority. Government finds that the applicant having failed to do so, has now sought to shift such responsibility to the Commissioner (Appeals) which is improper. Further, Government also finds the submission of the applicant/Department that the grey manufacturer should have presented themselves before the original authority to prove their genuineness to be far-fetched, as the responsibility of proving the alleged fraud was on the applicant.

11. Further, Government finds that the allegations of the applicant/Department that the respondent failed to produce any evidence for the transport of the grey fabrics to be without any basis as no documentary evidence has been placed on record to indicate that the same was called for from the respondent and that they had failed to produce the same. As regards the allegation that the respondent could not produce any evidence that the processed fabrics were transported from their premises to the port, Government finds that the exported goods were cleared from the factory under the supervision of the jurisdictional Central Excise Officers and exported under the supervision of Customs Officers, as indicated by the documents submitted by the applicant while claiming rebate; thus rendering this allegation hollow. One of the reasons on which rebate has been sought to be denied is that another firm, having the same address as the respondent was found to have bogus suppliers; Government notes that once again this is a mere allegation with any evidence to support the same and finds that in rebate cannot be denied to the respondent merely because some other firm shared the same address. Given the above, Government finds that none of the charges of the Department against the respondent, including the one that the respondent was involved in fraud, will stick as the same are not supported by any evidence. The decisions cited by the Department in support of their arguments will not find any application here as in all those cases it was proved by the investigation that the rebate

claimant had actively colluded with the other firms with the intent to fraudulently obtain rebate. Government finds that there is no such evidence in the instant case.

12. Lastly, Government finds that if the job-worker/processor had availed Cenvat credit without actually receiving any material, action in the form of a Demand Notice should have been issued to the processor to recover such erroneously availed Cenvat Credit. Government finds that at no stage has the applicant/Department submitted that such a demand notice has been issued to the job-worker/processor, M/s JDPM, to recover the Cenvat credit availed by them on the grey fabrics received from the grey manufacturer, M/s ATCIL. Thus, Government finds that the subject Revision Application fails on this count too.

13. Government finds that the impugned Order-in-Appeal dated 25.02.2021 is a proper speaking Order and has already covered all the issues raised by the applicant Department in the subject Revision Application. As discussed above, Government finds the impugned Order-in-Appeal allowing the rebate claimed by the respondent, to be legal and proper and upholds the same.

14. Government finds that the second Revision Application has been filed 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 above discussed rebate to the respondent. Government finds that the Revision Application against the Order-in-Appeal dated 06.10.2021 is on the same grounds as those in the Application preferred against Order-in-Appeal dated 25.02.2021 and it goes on to submit that since rebate was not payable, interest was also not payable. As discussed above, Government finds no merit in the grounds put forth by the applicant Department for rejecting the rebate claimed by the respondent. Having found so, Government finds that the Commissioner (Appeals) in the impugned Order-in-Appeal dated



06.10.2021 has correctly relied upon the decision of the Hon'ble Supreme Court in the case of Ranbaxy Laboratories Limited vs UOI [2011 (273) ELT 3 (SC)] and subsequent Board Circular dated 01.10.2002 on this issue, to hold that interest was payable to the respondent from the expiry of three months from the date of application of rebate. Thus, Government does not find any flaw in the Order-in-Appeal dated 06.10.2021 and upholds the same.

15. In view of the above, both the subject Revision Applications are rejected.

*Shrawan*  
*28/9/23*  
(SHRAWAN KUMAR)

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

ORDER No. *373 -* *374* /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 JKP International, C/o Pravin Uchil, 31/968/Jankidevi CHS., Vartak Nagar, Thane (W), Maharashtra- 400 606.
2. The Commissioner of Central Excise, (Appeals), Surat, 3<sup>rd</sup> floor, Magnus Mall, Althan Bhimrad Cana Road, Near Atlantis Shipping Mall, Althan, Surat - 395 017.
3. M/s MKC Legal, Advocate & Solicitors, 731, 7<sup>th</sup> floor, Ajanta Shopping Centre, Near Metro Tower, Ring Road, Surat, Gujarat - 395002.
4. Sr. P.S. to AS (RA), Mumbai.
5. Notice Board

