F.No.195/1448/12-RA

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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. 195/1448/2012-RA/1202 Date of Issue: 22/02/2018

ORDER NO. 37/2018/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 CENTRAL EXCISE ACT,1944.

Applicant : M/s. Dipika Overseas, Plot No. 13/192-193, Road No.6, Near Mahindra Work Shop, New Udhna, Udyognagar, Surat-395011

Respondent : The Commissioner of Central Excise, Raigad.

Subject :Revision Applications filed under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. US/ 517/ RGD/2012 dated 24.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai

ORDER

This revision application is filed by the applicant M/s Dipika Overseas, Surat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/517/RGD/2012 dated 24.08.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to order-in-original No. 1879/11-12/DC (Rebate)/Raigad dated 24.01.2012 passed by Deputy Commissioner (Rebate) Central Excise, Raigad.

2. The case in brief is that the applicant had filed appeal with the Commissioner of Central Excise, (Appeals-II), Mumbai against the Order-in-Original No. 1879/11-12/DC (Rebate)/Raigad dated 24.01.2012 passed by Deputy Commissioner (Rebate) Central Excise, Raigad vide which 47 rebate claims totally amounting to Rs. 81,48,984/- (Rupees Eighty One Lakhs Forty Eight Thousand Nine Hundred Eighty Four only) which were rejected 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 applicant could not have paid duty and did not have the option to pay the duty;
- Chapter sub heading Number of the Central Excise Tariff declared in the excise invoice and in the corresponding shipping bills did not tally;
- the procedure required for self sealing and self certification given in paragraph 6.1 of the Notification No. 19/2004-CE(NT) dated 06.09.2004 had not been followed;
- the disclaimer certificate by the manufacturer as given in paragraph 8.3 of Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions was not submitted;
- the date of removal of goods shown in the invoice was preceding the date of ARE1 in 10 cases;

- FOB value was lower than the assessable value;
- Declarations at Sr.No. 3 & 4 of ARE-1 not given in eight cases;
- Correct seal no./Voyage No./Vessel No. was not correctly mentioned on all the relevant documents and address of the Maritime Commissioner (Rebate) was wrongly mentioned;
- Non-submission of the triplicate copy of ARE-1 duly signed by the jurisdictional Central Excise Officer in nine rebate claims;
- Failure to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit on the inputs used in the exported fabrics.

3. Commissioner (Appeals) vide Order-in-Appeal No. US/517/RGD/2012 dated 24.08.2012 upheld the Order in Original No. 1879/11-12/DC (Rebate)/Raigad dated 24.01.2012 rejecting Rebate claims only on the following grounds:

- the procedure required for self sealing and self certification given in paragraph 6.1 of the Notification No. 19/2004-CE(NT) dated 06.09.2004 had not been followed -- Commissioner (Appeals) observed that this is a mandatory requirement to give the said certificate on the ARE-1 and said details on the invoices and the lapse cannot be condoned.
- FOB value was lower than the assessable value—Commissioner (Appeals) observed that the applicant clarified that the FOB price was inclusive of Excise duty paid and since they were to claim the rebate of duty paid by them the FOB price was reduced to that extent. The law in this regard is settled that the excise duty on the exported goods has to be paid 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 .

- Non-submission of the triplicate copy of ARE-1 duly signed by the jurisdictional Central Excise Officer in nine rebate claims— Commissioner (Appeals) observed that the this is one of the mandatory requirements wherein the jurisdictional Central Excise Officer certifies the duty paid nature of the exported goods and cannot be considered as condonable.
- Failure to submit the documentary evidence to prove the genuineness of the availment of Cenvat credit on the inputs used in the exported fabrics. – In this connection Commissioner (Appeasl) observed that the Commissioner, Central Excise, Raigad had issued departmental instructions No.1/2006; 2/2006 and 1/2008 for proper verification of the rebate claims. In the instant case the rebate sanctioning authority was apparently not satisfied about the 'duty-paid' character of the exported goods specifically due to the reason that the applicant as well as their processors namely M/s Rameshwar Textile Mills Pvt. Ltd., M/s Shree Labdhi Prints, M/s Suryanarayan Silk Mills, M/s Kritida Silk Mills and M/s Radha Dyeing & Printing Mills were appearing in the different Alert Lists issued by the different Central Excise formations and had given the opportunity to the applicants to produce the evidence for verification of the genuineness of the Cenvat credit availed on inputs and subsequently utilized by the processors for payment of duty on the above exports but the applicant failed to produce any evidence either before him or original authority and until and unless the duty paid character of the goods is proved, the rebate cannot be granted. Further, relying on Hon'able Bombay High Court Judgement Union of India v/s Rainbow Silks -2011 (274) E.L.T. 510 (Bom.) ; GOI order in Re: Sheetal Exports -2011 (271) E.L.T. 461 (G.O.I.) GOI order Re: Jhawar International 2012 (281) E.L.T. 460 (G.O.I.) the Commissioner (Appeals) observed that the applicans failed

to establish the bona fide nature of the transaction and therefore, rejection of the rebate claim on this ground has to be upheld.

4. Commissioner (Appeals) also observed that the applicant had further contended that when there is no time limit prescribed for issuance of the show cause notice, the general law of limitation of one year should be applicable. The time limit indicated in the departmental instructions is for normal cases whereas in the instant case, the duty paid character of the exported goods were in doubt due to the name of the applicant and processors appearing in the alert list as discussed supra. The adjudicating authority is answerable to the department for not issuing the deficiency memo /adjudicating the claims within the time limit but the delayed adjudication does not become illegal ipso facto. The show cause notice as well as the order of the adjudicating authority is not barred by the limitation. Accordingly, Commissioner (Appeals) upheld Order in Original No. 1879/11-12/DC (Rebate)/Raigad dated 24.01.2012

5. Aggrieved with the above order of the Commissioner (Appeals) the Applicant have filed the present Revision application on the following grounds that;

5.1 lower authorities have grossly erred in misunderstanding and mis-interpreting the submissions made by the applicant based on the Supreme Court judgment that the show cause notice issued beyond the period of one year is not sustainable in law. The law laid down was that where no express limitation have been provided in statute, the law of limitation for normal period of one year will apply. Under Section 11B of the Central Excise Act, 1944, no limitation for issue of show cause notice have been prescribed and therefore the general law of limitation of one year will apply in view of the Supreme Court judgment followed by the High Court. Even considering the alternate provisions of law prescribed under Section 11A of the Act for normal period and enlarge period which is one year and maximum five years

for issuance of the show cause notice. In the present case, the show cause notice dated 05.12.2011 have been issued for the rebate claims filed during 2004-2005 which is beyond the period of five years and therefore the said show cause notice is not maintainable in law as time barred. Thus, the findings of the lower authorities mainly the findings of Commissioner (Appeals) to the effect that - "The show cause notice as well as the order of the adjudicating authority is not barred by limitation." is absolutely incorrect and against the provisions of settled law and therefore the said orders are required to set aside in the interest of justice.

5.2 the findings of the lower authorities on the point that there was no self-sealing / self-certification on the face of ARE-1, is absolutely incorrect as the appellant filed reply dated 06.01.2012 to the said show cause notice dated 05.12.2011 wherein it is explained that - "The goods are stuffed in the factory and therefore there is declaration on the face of ARE-1 to the effect that - 'This is certified that the goods have been packed in my presence' and there is stamp and signature of the manufacturer of the goods." It is submitted by going by the evidences produced in the form of ARE-1 along with the rebate claims, it is crystal clear that self-sealing and self-certification has been given on the face of each and every ARE-1 and therefore the finding of the lower authorities are contrary to evidences on record and therefore the said findings are required to brush aside while allowing the appeal after examining the documents produced in the form of ARE-1 in the interest of justice.

5.3 the lower authorities have given findings on the point of non-submission of triplicate copy of ARE-1 without giving any finding and considering the evidences adduced in reply dated 06.01.2012 wherein the applicant have stated that -"As per our acknowledgment of our application in the form of Annexure-A, the claims papers have been received by your office on 31.08.2005 which has been duly

acknowledged by giving number 21396 whereby the document triplicate ARE-1 No. 445/2004-05 dated 27.02.2005 have been submitted and therefore your claim that triplicate copy of ARE-1 has not been submitted duly signed by the jurisdictional Central Excise officer is not correct. It appears that the said papers are misplaced from the file, if it is not in the file. Further, as per CBEC's Manual Chapter 8, Para 6.3, the disposal of the triplicate (third party) is prescribed, according to which it is sent to officer with whom rebate claim is to be filed either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in the official records. You are requested to call for these records from the Range Office of the processor and verify the same and also provide us the copy of the said record." Thus, the finding of the Commissioner (Appeals) to the effect that -"In respect of the non-submission of the Triplicate copy of ARE-1 duly signed by the jurisdictional Central Excise Officer in nine rebate claims I hold that this is one of the mandatory requirements wherein the jurisdictional Central Excise Officer certifies the duty paid nature of the exported goods and cannot be considered as condonable.", is without considering the submissions made by the applicant and therefore the said findings are not sustainable in law as the applicant have already submitted all triplicate copy of ARE-1 s along with the rebate claims. Thus, the rejection of the rebate claims by the lower authorities on the basis of the above findings is not sustainable in law and the said orders are required to set aside allowing the appeal in the interest of justice.

5.4 the finding of the lower authorities that the appellant failed to produce any evidence as regards the genuineness of Cenvat Credit availed on inputs used in the exported fabrics, is totally incorrect and contrary to evidences on record and explanations tendered and documents produced vide reply dated 06.01.2012 as the applicant purchased processed fabrics on the payment of full value of the goods including

duty element and exported the said fabrics as merchant exporter and therefore considering the judgment in the case of Roman Overseas reported in 2011 (270) E.L.T. 321 (Guj.) which has been upheld by the Supreme Court vide order dated 02.12.2011 in Petition(s) for Special Leave to Appeal (Civil) /2011 CC 19577/2011. The ratio of the said judgment is squarely applicable so far as ready goods purchased have been exported. It is submitted that in the case of processed fabrics purchased from the processors, the applicant is not required to produce the documents as regards to Cenvat Credit availed on inputs in exported goods but is required to produce evidence to the effect that the goods purchased and exported are duty paid and duty have been discharged by the said processors which has been produced and therefore the issue raised by the adjudicating authority in the show cause notice in this regard is not sustainable in law. Thus, the finding of the lower authorities to the effect that appellant failed to produce any evidence before the lower authorities as regards to genuineness of the Cenvat Credit availed on inputs is not sustainable in law.

5.5 the finding of the lower authorities that M/s. Rameshwar Textile Mills Pvt. Ltd., M/s. Labdhi Prints, M/s. Suryanarayan Silk Mills, M/s. Kirtida Silk Mills and M/s. Radha Dyeing and Printing Mills were appearing in different Alert Lists cannot be the ground for rejection of the rebate claims as there is no allegation that the said processors had availed and utilized the said credit while clearing the goods to the appellant for export and there is one to one correlation of taking and utilization of credit and further at the time of clearance of the goods to the applicant there was sufficient balance in the account of the processors and therefore it cannot be said that the duty payment made was not genuine. In view of this, the finding of the Commissioner (Appeals) as well as rebate sanctioning authority is not correct in law.

5.6 the Commissioner (Appeals) have wrongly relied upon the judgment of Bombay High Court in the case of Rainbow Silks as under the said order the Revisional Authority is directed to give its finding on the contentions raised by the revenue and therefore averment made in para 6 & 7 are the facts narrated in the order and not the verdict of the court. The Court by remanding the order directed the Revisional Authority to give the finding. In that case the exporter was party to fraud whereas in the present case, there is no such allegation in the show cause notice dated 05.12.2011 and therefore the ratio of the judgment in the case of Rainbow Silk is not applicable when the final verdict have been given by the Court in the case of Roman Overseas which have been upheld by the Supreme Court rejecting the SLP filed by the revenue. In view of this, the reliance of the lower authorities in the case of Rainbow Silk does not come in the way for allowing the appeal of the appellant with consequential relief.

5.7 the lower authorities have failed to appreciate the point of law that the Hon'ble High Court of Bombay have not laid down law in Rainbow Silk Mills and according to law the accumulated credit can be utilized for payment of duty which is statutory provision in law which cannot have overriding effect by any verdict of the Court and for the said purpose the statute is required to be amended. In view of this, there is no conclusion in the Hon'ble High Court order but the High Court have directed to Revisional Authority saying -"This submissions warrants serious consideration and the Revisional Authority would have to apply its mind to it." Meaning thereby the Revisional Authority have to decide the law for utilization of accumulated credit. In view of this, the basis taken by the lower authorities relying upon the judgment of the High Court of Bombay is not applicable at all and therefore the appeal filed by the appellant is required to allow with consequential relief.

5.8 the lower authorities have erred in relying upon the judgment in the case of Sheetal Exports - 2011 (271) ELT 461 (GOI) and Jhawar International - 2012 (281) ELT 460 (GOI) and Sheela Dyeing and Printing Mills Pvt. Ltd. - 2007 (219) ELT 348 (Tri.-Ahd.) and 2008 (232) ELT 663 (Guj.). All these judgments are pertaining to the issue where the person is party to fraud. In the present case, the applicant is not party to fraud and there is no allegation in the show cause notice also that the applicant is party to fraud. In absence of such, the judgments cited by the Commissioner (Appeals) and adjudicating authority are not applicable. In view of this, finding of the lower authorities based on such judgments is not sustainable in law and therefore the said order is required to set aside allowing the appeal with consequential relief.

5.9 the lower authorities have failed to appreciate that there was violation of principles of natural justice as after filing the rebate claims in 2004-2005, the show cause notice was issued on 05.12.2011 fixing the date of hearing on 28.12.2011, 04.01.2012 & 11.01.2012 without giving thirty days' time for filing reply as requested and abruptly deciding the show cause notice vide order dated 24.01.2012. In view of this, the order passed is in violation of principles of natural justice which is not sustainable in law.

5.10 the lower authorities have erred in not taking into account properly the explanations tendered and the judgments cited in reply dated 06.01.2012 as well as submissions made in appeal memo and grounds taken therein and therefore also the orders passed by the lower authorities are not sustainable in law.

6. A personal hearing was held in this case on 27.12.2017. Shri Kaushik I. Vyas, Shri Deepali Kamble, Advocates and Shri Tulsikumar Yadav, Manager duly authorized by the applicant appeared for hearing and reiterated the made in Revision Application along with written submissions

filed. The advocate submitted that they have filed documents showing duty paid character of inputs. Hence the Order in Appeal be set aside and Revision Application be allowed. The case may be remanded for denovo adjudication.

7. 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.

8. Government observes that the Appellate authority i.e Commissioner (Appeals) has upheld the Order of Original adjudicating authority rejecting the rebate on the following issues :

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

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

(iii) Non-submission of the triplicate copy of ARE-1 duly signed by the jurisdictional Central Excise Officer in nine rebate claims

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

9. 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. From the Order in Original dated 24.01.2012, Government observes that the applicant submitted that FOB value was not the criteria for sanctioning rebate claims; that exceeding of the FOB value to the extent of 150% was permissible in law; that further the rebate was not claimed of FOB value (export invoice) but only on excise invoice which was permissible in law. In this regard, Government is in full

agreement with Commissioner (Appeals) observations in the impugned Order in Appeal which are as under :

> *"the law in this regard is settled that the excise duty on the exported goods has to be paid 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.*

10. As regards Self Certification and Self sealing procedure, the applicant has contended that –

> *"The goods are stuffed in the factory and therefore there is declaration on the face of ARE-1 to the effect that - 'This is certified that the goods have been packed in my presence' and there is stamp and signature of the manufacturer of the goods." It is submitted by going by the evidences produced in the form of ARE-1 along with the rebate claims, it is crystal clear that self-sealing and self-certification has been given on the face of each and every ARE-1 and therefore the finding of the lower authorities are contrary to evidences on record and therefore the said findings are required to brush aside while allowing the appeal after examining the documents produced in the form of ARE-1 in the interest of justice.*

From the copies of the ARE-1s enclosed to the Revision Application Government has observed that the remark to the extent that ' *it is certified that goods have been packed in my presence'* is appearing on the said copies and therefore, after vetting the same on the original copies of the same should be considered as a self-sealing and self-certification on the Are-1s for the purpose of sanctioning the rebate claims.

11. As regards non-submission of triplicate copy of ARE-1 with the claims the applicant have stated that -"As per our acknowledgment of our application in the form of Annexure-A, the claims papers have been received by your office on 31.08.2005 which has been duly acknowledged by giving number 21396 whereby the document triplicate ARE-1 No. 445/2004-05 dated 27.02.2005 have been submitted and therefore your claim that triplicate copy of ARE-1 has not been submitted duly signed by the jurisdictional Central Excise officer is not correct.

12. Government observes that the applicant has referred only to claim No. 21396, however, from the Deficiency memo cum show cause notice issued to the applicant it is observed that the applicant had failed to submit the triplicate copies of the ARE-1 in respect of claims No. 21395, 21397, 21400, 21393 all dated 30.08.2005. Government further observes that Para 8.4 of the part 1 of Chapter 8 of the C.B.E. & C. Excise Manual prescribes the following guidelines :-

> *"8.4 After satisfying himself that the goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident from the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are 'duty-paid' character as certified in the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise (Range Office), the rebate sanctioning authority will sanction the rebate, in part or full. In case of any rejection or reduction of the claim, an opportunity shall be provided to the exporter to explain the case and a reasoned order shall be issued."*

From the above, it is evident that triplicate copies of ARE-1 are required to be verified to check the duty paid nature of the goods.

13. 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. 1879/11-12/DC (Rebate) / Raigad dtd. 24.01.2012 observed that

> *"During the material time, the DGCEI, Vadodara and Surat Commissioneraate 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."*

14. Government further observes from the Order in Original that name of the applicant appeared in two lists, one issued by the Central Excise Thane-I Commissionerate and other by Surat-I Commissionerate and the names of the processors who supplied the goods to the applicant have also been appearing in the said alert lists. The advocate appearing on behalf of the applicant it its submissions dated 18.12.2017 made before the Revisionary Authority has submitted as under:-

14.1 The applicant exported processed fabrics and filed 47 (Forty Seven) rebate claims. It is in three categories as below –

Category 1:- Processed fabrics outright purchased were exported under 11 ARE-1s as per Annexure-A for the rebate amount of Rs. 20,89,791/-.

Category 2 :- The grey fabrics were purchased and sent for processing and after processing the goods were exported as merchant exporter under 26 ARE-1s as per Annexure-B for the rebate amount of Rs. 34,00,658/-.

Category 3:-The exporter is registered under Rule 12B and holding registration. Grey fabrics were purchased and credit was taken by the exporter. The goods were sent for job-work to the processors which were returned and exported by the exporter registered under Rule 12B containing 10 ARE-1s as per Annexure-C for the rebate amount of Rs. 26,58,265/-.

14.2 The goods mentioned in Category 1 were purchased on full payment of the value of the said goods + duty indicated on the said invoices and the export of the said goods are not in dispute. The said goods were purchased from M/s. Radha Dyeing and Printing Mills in August, 2005 and were exported. The payment of the said goods have been made and foreign remittance have been received. The duty payment certificates is required to be verified in terms of Order passed by Revisional Authority in the case of Guria Textiles and others vide Order No. 1605-1615/12-CX dated 20.11.2012, wherein it is held that –

*"The duty payment certificates are to be submitted by jurisdictional Range Superintendent. Non-submission of such certificate to Range Superintendent cannot be ground for rejection*

*of rebate claim. Department should call for such certificates from Superintendent concerned."*

14.3 In respect of Category 2, it is submitted that the grey fabrics were purchased from the various grey manufacturers and the said grey manufacturers are genuine and were in existence. The payment for grey fabrics have been made. The said grey fabrics were sent for processing to the processors who supplied the goods under Central Excise invoices and the said goods were exported. The processors were and are in existence. The payments have been made for the job-work conducted by the job-worker processors and the duty have been paid by them for which duty payment certificates have been issued in respect of said 26 ARE-1s which are enclosed herewith. Neither the grey suppliers nor the processors are under Alert list so far as the goods are supplied to the present exporter.

14.4 In respect of Category 3, the present exporter have purchased grey fabrics on full payment of value of the goods + duty and have recorded in the register maintained under Rule 12B and the said grey fabrics were sent for processing on job-work basis and job-work payment was made to the processors and thereafter the goods were exported under 10 ARE-1s. The duty payment certificates are enclosed herewith.

It is submitted that the payment of grey fabrics have been made by the applicant.

14.5 It is submitted that payment for job-charges to the processors have been made by the applicant which includes excise duty also.

14.6 The processors appearing in Alert List may be for different purpose and for different grey suppliers whose credit have been

taken. The grey manufacturers from whom the present applicant have purchased grey fabrics are genuine and therefore further time of 15 to 20 days may please be granted to produce the documents in the form of grey invoices, their payments and job-charge payments to the processors to establish genuineness of duty paid nature of goods.

15. 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 the 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".

16. 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."*

17. In view of discussions and findings elaborated above, detail verification by original adjudicating authority of the duty paid nature of the export goods by the applicant is essential by correlating the said goods with the grey fabrics used therein and the yarn used in the grey fabrics" and also considering the alert notices, show cause notices and 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 for verification.

18. The original authority is 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. As regards non submission of triplicate copy of ARE-1, Government observes that the applicant manufacture/and merchant exporter exported the goods under self-sealing. In some cases the applicant did not submit the triplicate copy of the ARE-1 along with the rebate claims. The applicant is

directed to submit the same or any other proof obtained from the jurisdictional Range Superintendent evidencing the duty paid nature of the exported goods. The substantial requirement is that the goods should be duty paid, and once it is proved the procedural lapse for not getting the triplicate copy of the ARE-1 endorsed by the concerned Range Superintendent shall be condoned in the interest of Justice.

19. In view of above discussions and findings, Government modifies the impugned order-in-appeal to above extent and remand back the instant case to the original authority which shall consider and sanction the claimed rebates as per the observations given in the preceding paras and in accordance with law after giving proper opportunity within eight weeks from the receipt of this order. The applicant who shall submit all requisite collateral evidences/documents to prove the export of duty paid goods as per provisions of Notification No. 19/2004-C.E. (N.T.), dated 6-9-04 read with Rule 18 of Central Excise Rules, 2002, within 4 weeks from the receipt of this order.

20. Revision application is disposed of in terms of above.

21. So ordered.

20.2.2018

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

20.2.18

एस. आर. हिरुलकर
S.R. HIRULKAR

ORDER No. 37/2018-CX (WZ) /ASRA/Mumbai DATED 20.02.2018

To
M/s Dipika Overseas,
Plot No. B/192-193, Road No.6,
Near Mahindra Work Shop,
New Udhna Udhyog Nagar,
Surat — 395 011.

Copy to:

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