

REGISTERED SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F. No. 198/02/WZ/2020-RA

18005

Date of issue: 22.11.2023

ORDER NO. 381/2023-CX (WZ) /ASRA/MUMBAI DATED 20.11.2023 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 CENTRAL EXCISE
ACT, 1944.

Applicant : Commissioner, CGST & Central Excise, Surat

Respondent : M/s. Aakanksha Overseas

Subject : Revision Applications filed under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-SRT/(Appeals)/PS-596/ 2019-20 dated 28.01.2020
passed by the Commissioner of CGST & Central Excise,
Appeals Commissionerate, Surat.

ORDER

This Revision Application has been filed by the Commissioner, CGST & Central Excise, Surat (hereinafter referred to as "the Applicant-Department") against Order-in-Appeal No. CCESA-SRT/(Appeals)/PS-596/ 2019-20 dated 28.01.2020 passed by the Commissioner of CGST & Central Excise, Appeals Commissionerate, Surat.

2. The brief facts of the case are that M/s. Aakanksha Overseas (hereinafter referred to as "the Respondent"), a merchant-exporter, had filed seven rebate claims totally amounting to Rs.6,22,840/- against export of various textile goods in the year 2007-08 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate sanctioning authority, rejected the rebate claims mainly on the grounds that the authenticity of input invoices received from grey fabrics suppliers on the strength of which cenvat credit was availed and utilized for payment of duty on export goods by the processor was not established. Aggrieved, the respondent filed an appeal which was allowed by the Commissioner (Appeals).

3.1 Hence, the Applicant-Department has filed the impugned Revision Application mainly on the following grounds:

- (i) The Commissioner (Appeals) has failed to appreciate the facts that in the present case the merchant exporter i.e. the respondent is the purchaser of grey fabrics and shown the same as has been processed on job-work basis from the processor. However, grey fabric manufacturers who have issued invoices for supply of grey fabrics to the respondents, were found to have issued only invoices without physical movement of goods. The grey fabrics covered under these invoices, were shown to have been supplied to the processor. As grey fabric was not supplied under the said invoices, the question of processing of said grey fabrics and subsequent export of resultant processed fabrics does not arise. In view of this, the

findings of the Commissioner (Appeals) -- *"The duty paid nature of the invoices of the processor has not been questioned. Therefore, denying the rebate on the basis of non-receipt of grey fabrics from the supplier is not sustainable, there is no one to one correlation of utilization of credit by the processor."*, is not correct and against the basic principles of availment and utilization of Cenvat Credit. In this case, the processor had received invoices not accompanied with grey fabrics and therefore, invoices were procured only to avail CENVAT credit which was subsequently utilised for payment of duty on processed fabrics, As CENVAT credit on the basis of such invoices was not admissible, the duty payment on processed fabrics utilising such credit was not valid and thereby, the processed fabrics exported by the respondent is to be considered as non-duty paid. Accordingly, allowing rebate of duty shown to have paid on processed fabrics, is not correct. In this regard, the reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of CCE Mumbai-I v/s Rainbow Silk- 2011 (274) ELT 510 (Bom.) wherein the Hon'ble Court held that - *"Since there was no accumulation of Cenvat Credit validly in law, there was no question of duty being paid there from."*

- (ii) The Commissioner (Appeals) has erred in giving findings that the issue is decided in Government of India in its Order No. 304-307/07 dated 18.05.2007 wherein it was held that the merchant exporter cannot be denied the rebate claim for the reason that manufacturer has availed Cenvat Credit wrongly on the basis of bogus duty paying documents when there is no evidence to show that the merchant exporter was party to fraud. The Commr.(A) failed to take note that the facts of said case and the case in hand are quite different. In the cited case the merchant exporter had purchased the processed fabrics from the processor and exported the same, whereas in the present case the respondent himself had shown purchase the goods i.e. grey fabrics from bogus/fake grey manufacturers, under the cover of fake/bogus duty paid invoices,

without actual receipt of grey fabrics, shown to send the same to the processor for processing on job-work basis and further shown to have exported the resultant processed fabrics. Thus, the respondent was actively involved at every stage in availing Cenvat Credit fraudulently based on bogus/fake invoices and utilising the same for payment of duty on processed fabrics. The respondent was actively involved in fraud to encash the Cenvat Credit as rebate. He was a party to fraud in the entire case. When the purported persons, who have issued the fake/bogus duty paid invoices of grey fabrics are fictitious, then the whole transaction starting from procurement of grey fabrics and ending with export of resultant processed fabrics are vitiated. Thus, the order no. 304-307/2007 of GOI is not applicable in the present case.

- (iii) The Commissioner (Appeals) has erred in giving findings that the said grey manufacturers were in existence at the material time and hence transactions between grey manufacturers and suppliers were bonafide and genuine. The said findings of the Commissioner (Appeals) is not correct much particularly when the DGCEI had conducted extensive investigation and proved that the said grey manufacturers are not in existence at the material time. Further the respondent had failed to produce the documentary evidences to establish the movement of grey fabrics from grey manufacturers to processors and movement of processed fabrics from processors to the port of export. In view of this also, the transactions between the grey manufacturers and processors are not genuine. In view of the above the order passed by the Commissioner (Appeals) is not correct and required to be set aside in the interest of revenue.

- (iv) The Commissioner (Appeals) has erred in not considering the settled position of law laid down by Hon'ble High Court of Gujarat in the case of Diwan Brothers Vs. Union of India (SCA No. 13931 of 2011).
- (v) The Commissioner (Appeals) has erred in not considering the several judgments relied upon by the AA. The Hon'ble Apex Court in the case of Omkar Overseas Ltd. (2003 (156) ELT 167 (SC) has held that rebate should be denied in cases of fraud. In Sheela Dyeing and Printing Mills (P) Ltd. — 2007 (219) ELT 348 (Tri.-Mum.) the Hon'ble CESTAT held that any fraud vitiates transaction. This judgment has been upheld by the Hon'ble High Court of Gujarat. In the case of Chintan Processor — 2008 (232) ELT 663 (Tri.-Ahm.), the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as under - .

"Once the supplier is proved non-existent it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."

- (vi) In similar case of Multiple Exports Pvt. Ltd., Government of India vide Order No. 668-686/11-CX dated 01.06.2011 has upheld the rejection of rebate claim by lower authorities. This order is upheld by the Hon'ble High Court of Gujarat vide its order dated 11.10.2012 in SCA No. 98/12 with SCA No. 101/12, filed by the party. In view of the above also, the order passed by the Commissioner (Appeals), is not correct and required to be set aside in the interest of revenue.

3.2 The Respondent has filed cross objections mainly contending as under:

- (i) The facts mentioned in revision application that investigation conducted by DGCEI, Vadodara established that the transaction between the respondent and the said grey fabrics suppliers were only

paper transactions without actual receipt of goods with an intent to avail undue benefit of Cenvat Credit and rebate. It is also mentioned that following grey suppliers are not genuine —

- (1) M/s. Priyadarshni Fashions Pvt. Ltd.,
- (2) M/s. Hariom Silk Industries,
- (3) M/s. Hanuman Textiles,
- (4) M/s. Hardik Textiles,
- (5) M/s. Agarwal Twisting Works and
- (6) M/s. Shree Krishna and Ram Industries etc.

The above version made in para 1 & 2 of the revision application is totally incorrect and baseless. On the contrary, DGCEI had investigated the case in detail and had filtered the grey suppliers who are genuine and who are fake and they declared 29 grey suppliers has genuine one which are as under —

1. Maa Krupa Textile
2. Prahaladbhai Kanjibhai (HUF)
3. Sadguru Fabrics
4. Arvindbhai Kanjibhai (HUF)
5. Krishna Corporation
6. Sabir Textiles
7. Mahabali Fabrics
8. Shikha Textiles
9. **Agarwal Twisting Works**
10. Jyoti Silk Mills
11. Indian Polyfins P. Ltd.
12. Saraswat Trading Investment Co.
13. Singhal Brothers
14. Rahul Textiles
15. Saraswat Industries
16. P Kumar Fabrics
17. Bharat Enterprises
18. M.B. Twisters
19. Shree Hari Fabrics
20. Sanjay Textiles
21. Shree Tirupati Synthetics
22. Shreenathji Textiles

23. Shri Tejanand Silk Mills
24. **Hanuman Textiles**
25. **Hardik Textiles**
26. **Priyadarshini Fashion P. Ltd.**
27. **Shree Hariom Silk Industries**
28. Mahalaxmi Corporation
29. Ram Tex Fab.

Based on this, the revision authority passed Order No. 152-153/14-CX dated 17.04.2014 in the case of KLA Overseas and the said Revision Order has been accepted by the Commissioner, Central Excise, Raigad on 07.05.2014 and the rebate sanctioning authority vide Order dated 28.11.2014 have sanctioned and paid rebate claims along with interest in due compliance of the said revisional authority's order.

(ii) The respondent states and says that once the issue is settled by revisional authority and accepted by the revenue department, there is no cause for not complying with the said order which is universal one and therefore also the present revision application filed by the revenue deserves to be dismissed.

(iii) The respondent submits that no stay has been obtained and there is no provision for stay in revision application and therefore following Board's Circular No. 276/ 186/2015-CX.8A dated 01.06.2015, the rebate is to be paid along with interest forthwith subject to final outcome of the revision application filed by the revenue.

4. Personal hearing in the case was held on 29.08.2023. Shri R.V.Shetty and Shri S.R.Shetty, Advocates, appeared on behalf of the respondent and submitted that the Commissioner(Appeals) has passed a judicious order. They further submitted that RA filed by the Applicant-Department have no specific evidences against the respondent. They requested to uphold the Order passed by the Commissioner (Appeals). No one appeared for the personal hearing on behalf of the Applicant-Department.

5. Government has carefully gone through the relevant case records available in the case file, written submissions, and perused the impugned Orders-in-Original and Order-in-Appeal.
6. Government observes that the respondent is a merchant-exporter and had procured grey fabrics and got it processed/manufactured from manufacturer/processor - M/s. Swastik Poly Prints Pvt. Ltd and exported the same in the FY 2007-08. The respondent had filed seven rebate claims totally amounting to Rs.6,22,840/- which were rejected as the respondent failed to provide some documents asked for by the OAA viz. details regarding weight & GSM of grey fabrics, transport documents i.e., L/R etc. pertaining to movement of grey fabrics from the premises of suppliers of grey fabrics to the premises of processor, copies of invoices & challans of yarn manufacturers who had supplied yarn to the grey manufacturers etc. However, the AA allowed the appeal and hence the impugned RA has been filed by the Applicant-Department.
7. Government finds that the present Revision Application has been preferred as during the material period, cases involving fraudulent claims for rebate were detected as the original suppliers of grey fabrics, who purportedly paid duty, were found to be non-existent. On examining the impugned OIA, Government finds that the AA has discussed the issue in detail and reached at the conclusion after proper analysis of the facts on record. The relevant paras of the OIA are reproduced hereunder:
- 10. The show cause notice states that the appellant had shown purchase of fabrics from various grey fabrics manufacturers viz. M/s. Priyadarshini Fashions Pvt. Ltd., M/s. Hariom Silk Industries, M/s. Hanuman Textiles, M/s. Hardik Textiles, M/s. Agarwal Twisting Works & M/s. Shri Krishna & Ram Industries etc. and sent the same for processing to various processors on job work basis. The reference of an Investigation conducted by the DGCEI in the case of M/s. Deepak Processors (who had shown*

purchase of fabrics from M/s. Hanuman Textiles) has been given wherein it was revealed that M/s. Hanuman Textiles is a fake/bogus firm. However, it is not mentioned anywhere in the entire show cause notice as to how the said M/s. Hanuman Textiles is related with the processor (M/s. Swastik Poly Prints) in the case of subject rebate claims filed by the appellant. It is also not forthcoming as to whether any investigation in respect of other grey fabric suppliers/manufactures was conducted or not and as to whether they were also fake/bogus firms. The only thing which is mentioned against M/s. Swastik Poly Prints is that a show cause notice for demand/recovery of wrongly taken and utilized Cenvat Credit was raised and confirmed vide OIO No. 40/ADJ/ADC-BA/2011-12 dated 25.01.2012. However, ongoing through the said OIO also (which is available in a different appeal filed by M/s. Swastik Poly Prints), I find that the names of the above grey fabric suppliers are not appearing there. In other words, the case is although related to demand and recovery of wrong availment of Cenvat Credit by M/s. Swastik Poly Prints, but in respect of different other grey fabrics manufacturers/suppliers not the above-mentioned suppliers. It is clear and evident that no investigation or evidence has been brought out on record in the instant case to prove that the said grey fabrics suppliers were fake/bogus and that they had not supplied the grey fabrics to the processor (M/s. Swastik Poly Prints). On the contrary, the appellant has submitted documentary evidences to show that they were in existence at the material time period. In these facts and circumstances, I do not find any merit in the allegation that there was only paper transaction between the grey manufacturers/suppliers and the supplier (M/s. Swastik Poly Prints).

11. *Even if the allegation that the grey fabric was not received from the grey fabric suppliers/manufacturers at all at the premises of processor (M/s. Swastik Poly Prints) is accepted then also the rebate of duty shown to have been paid on the processed fabrics cleared to the appellant and*


exported thereafter cannot be denied when their export is not under dispute as it has not been brought out on record that if the goods were not obtained from the grey fabric suppliers then out of which grey fabrics the processed fabrics (actually exported) were manufactured by the processor. In other words, the alternate source of procurement of fabrics has not been identified in the case. The duty paid nature of the invoices of the processor has not been questioned. Therefore, denying the rebate on the basis of non-receipt of grey fabrics and/or suppliers non-existent etc. is not sustainable, particularly when there is no one to one correlation of utilization of credit by the processor. When the processor was not able to produce the called for documents in order to verify the facts as the same were available with DGCEI, it was incumbent upon the adjudicating authority to get the facts verified from the documents available in the department. Further, it is the task of the jurisdictional excise authorities to conduct the verification of duty payment at the input stage from the concerned jurisdictional officers. The appellant cannot be made liable for the same as has been done in the instant case. The department has not made any investigation against the processor in order to find out as to whether they actually received the grey fabrics in question or not. The facts and circumstances of the case do not inspire confidence in the department's case. In absence of the investigation and evidences, it has to be held that the goods were processed by the processor and cleared on payment of duty which in turn were exported by the appellant. There is no allegation in the case that the appellant was party to fraud, if any, committed by the grey fabric supplier. Their legitimate claim of rebate, therefore, cannot be denied to them particularly when there are no allegations that the appellant either had knowledge or had even failed to take basic care required in law or in general terms to verify that goods were duty paid. The Government of India in its Order No. 304-307/07 dated 18.05.2007 has decided the issue holding that merchant-exporter

cannot be denied rebate claim in such circumstances when manufacturer had availed Cenvat Credit wrongly on the basis of bogus invoices and there is no charge of any mutuality of interest, financial control, flowback of funds and non bonafide nature of transactions between the merchant exporter and manufacturer/supplier of goods. Even the action for not taking reasonable steps as provided under explanation to Rule 9(3) of Cenvat Credit Rules, 2004 lies on the manufacturer taking credit (processor in the instant case) and not on the appellant/merchant exporter who at third stage purchased goods in normal course and exported them on the strength of clearances under ARE-1s and Central Excise invoices indicating duty payment particulars showing all other details. If the exporter as in the instant case has procured goods from the supplier/manufacturer under cover of proper Central Excise documents including invoices showing duty payment particulars and payment has been made of entire amount inclusive of duty and goods exported as per prescribed procedure, it will be legally incorrect to deny him the benefit of rebate in case there is no charge that the transaction between the supplier and exporter was not at arm's length, or non bona fide or the exporter had any nexus/connivance or any other role to play in the alleged wrong procurement of inputs by the supplier/ manufacturer on bogus invoices, if any. There is no such charge or ground. The legal provisions exist in the Central Excise Act, 1944 and Cenvat Credit Rules, 2004 for recovery of such alleged wrongly availed credit from the supplier/ manufacturer along with interest and penalty but the exporter in the facts and circumstances cannot be denied his otherwise legitimate rebate claim.

8. Government observes that concurs with the above findings of the AA. In the impugned RA, the allegations raised in the investigation have been repeated and the contentions are not based on any new facts. The impugned rebate claims were filed in FY 2007-08, hence already around 15 years have lapsed. Government holds that the refund should not be denied on mere allegations, as

there are provisions in law to safeguard the Government revenue, which can be used to cover up any future exigency. Therefore, Government does not find any infirmity in the impugned Order-in-Appeal allowing the rebate claimed by the respondent and accordingly upholds the same.

9. The subject Revision Application is rejected, being devoid of merits.


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

ORDER No. 381/2023-CX (WZ)/ASRA/Mumbai dated 20.11.2023

To,

M/s. Aakanksha Overseas,
Plot No. 177/1, G.I.D.C.,
Pandésara, Surat - 394 221.

Copy to:

1. Commissioner of CGST & Central Excise, Surat,
New Central Excise Building, Chowk Bazar, Surat - 395 001.
2. Adv. Shri R.V.Shetty /Shri S.V.Shetty,
B-10, Chandra Niwas, Marol CHS Ltd.
Adj. to Airport Metro Station,
Andheri(E), Mumbai - 400 059
3. Sr. P.S. to AS (RA).
4. Guard file