REGISTERED SPEED POST

सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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

F.Nos. 198/03/WZ/2022-RA / 2025
198/01/WZ/2023-RA

Date of issue: 22.11.2023

ORDER NO. 384-385 /2023-CX (WZ) /ASRA/MUMBAI DATED 20.11.23 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. Vandana Overseas

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal passed by the Commissioner of CGST & Central Excise, Appeals Commissionerate, Surat.

ORDER

These 2 Revision Applications have been filed by the Commissioner, CGST & Central Excise, Surat (hereinafter referred to as "the Applicant-Department") against following Orders-in-Appeal passed by the Commissioner of CGST & Central Excise, Appeals Commissionerate, Surat :

RA No.	Order-in-Original No. (OIO)	Order-in-Appeal No. (OIA)
198/03/WZ/2022-RA	VIII/Surat/Refund-14/DC/AS/ Div-II/2021 dated 17.01.2022	CCESA-SRT/(Appeals)/PV-040/ 2022-23 dated 31.05.2022
198/01/WZ/2023-RA	VIII/Surat/Refund-17/SM/AC/ Div-II/2022-23 dated 18.08.2022	CCESA-SRT/(Appeals)/PV-104/ 2022-23 dated 12.10.2022

2. The brief facts of the case are that M/s. Vandana Overseas (hereinafter referred to as "the Respondent"), a merchant-exporter, had filed four rebate claims totally amounting to Rs.5,54,829/- 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 appeals which were rejected by the Commissioner (Appeals).

3. Hence, the Respondent filed Revision Applications which were decided vide RA Order No. 327-334/2021-CX(WZ)/ASRA/Mumbai dated 29.09.2021 whereby the OIAs were set-aside and the matter was remanded back to the original authority for de-novo adjudication for a limited purpose of verification of duty payment in all the rebate claims on the basis of documentary evidence available as well as outcome of the investigations/SCNs and to pass a well-reasoned order after following the principle of natural justice. Accordingly, the

matter was adjudicated de-novo vide OIO No. VIII/Surat/Refund-14/DC/AS/Div-II/2021 dated 17.01.2022 whereby the rebate claims totally amounting to Rs.5,54,829/- were again rejected. The respondent filed an appeal against this OIO which was allowed by the Appellate Authority (AA) vide OIA No. CCESA-SRT/(Appeals)/PV-040/2022-23 dated 31.05.2022. The Applicant-Department has filed impugned RA No.198/03/WZ/2022-RA against this OIA.

4. Consequent to OIA dated 31.05.2022, the respondent again filed an application for refund amounting to Rs.5,54,829/- alongwith interest which was sanctioned by the Original Adjudication Authority (OAA) vide OIO No. VIII/Surat/Refund-17/SM/AC/Div-II/2022-23 dated 18.08.2022. However, aggrieved due to non-granting of interest on the refund amount, the respondent filed an appeal which was allowed by the AA vide OIA No. CCESA-SRT/(Appeals)/PV-104/2022-23 dated 12.10.2022. The Applicant-Department has filed impugned RA No.198/01/WZ/2023-RA against this OIA.

5. The impugned two Revision Applications are filed mainly on the following grounds:

(i) The findings of the Commissioner (Appeals) that "*involvement of M/s. Rachna Art Prints Pvt. Ltd., in fake transaction of grey fabrics has not been proved by the department*", is not correct and against the basic principles of availment and utilization of Cenvat Credit. The grey fabric manufacturer/supplier who have issued invoices for supply of grey fabrics to the respondent were found to have issued only invoices without physical movement of goods. It is amply clear from the investigations as well as the statements recorded that the manufacturer/supplier have issued only bogus duty paid invoices without actual supply of grey fabrics. As the grey fabrics were not supplied under the said invoices, the question of processing of said grey fabrics and subsequent export of resultant processed fabrics does not arise. The manufacturer exporter

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, thus, 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.

(ii) In this regard, the reliance is placed on the judgment of Hon'ble High Court of Bombay in the case of C.C.E. 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.*" 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.

(iii) The Commissioner (Appeals), has erred in giving findings that the allegations of the department that the processor/manufacturer had availed Cenvat credit fraudulently has not sustained and genuineness of Cenvat credit at the end of processor/manufacturer is no more open to question, therefore, the rebate claims of Central Excise duty paid by the processor and filed by the respondent on the exports of processed fabrics cannot be rejected. The said finding of the Commissioner (Appeals), is not correct much particularly when the DGCEI/DRI had conducted extensive investigation and proved that the said grey manufacturers/suppliers are not in existence at the material time and are bogus firms. Thus, the Commissioner (Appeals), has failed to consider that on the basis of the investigation as well as various evidences which shows that the manufacturer/supplier had supplied only duty paid invoices without accompanies of grey fabrics to the respondent.

(iv) The Commissioner (Appeals) has erred in not considering the settled position of law that the fraud vitiated everything. The said law is also settled by the Hon'ble Supreme Court in the case of C.C. Vs. Candid Enterprise, 2001(130) 404 (SC) wherein the Hon'ble Court have held that fraud nullifies everything. In the present case, respondent had fraudulently obtained fake invoices and tried to get undue benefit of rebate claims by showing procurement of grey fabrics from fake/bogus/non-existent supplier and also by showing export of processed fabrics from the said shown grey fabrics. Thus, in the present case, the respondent indulged in fraud directly and therefore the above law is squarely applicable to the respondent. Hence, the order passed by the Commissioner (Appeals) is not legally correct.

(v) 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) wherein the Hon'ble Court have held in Para 9 that:

"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or non-existent, the petitioner cannot be claimed rebate merely on the strength of exports made."

(vi) The Commissioner (Appeals) has not appreciated that there are many other judgments/orders of various higher forums on the similar issue. 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."*

(vii) 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.

(viii) The Commissioner (Appeals), has failed to appreciate the facts by way of placing reliance on the judgment of the Hon'ble Supreme Court of India, in case of M/s. Ranbaxy Laboratories Limited Vs. Union of India, and the Hon'ble Supreme Court latest judgment in case of Manisha Pharma Plast Pvt. Ltd. reported in 2020 (374) ELT 145 (SC), as well as Circular No. 670/61/2002-CX dated 01.10.2002, issued by the Central Board of Excise and Customs, New Delhi. Firstly, it is abundantly clear that the instance issue entirely related to the fraudulent claim of rebate which totally differs with the general/ normal circumstances. It is also fact on record that present respondent shown that they had procured the man-made fabrics as well as grey fabrics from the various manufacturer/

processor/ suppliers; thereafter the same were shown to be exported. However, the manufacturer/processor/suppliers of man-made fabrics/ grey fabric, who have issued invoices for supply of man-made fabrics/ grey fabric to the respondents, were found to have issued only invoices without physical movement of goods. It is amply clear from the investigations that the manufacturer/ processor/ suppliers have issued only bogus duty paid invoices without actual supply of fabrics. As the man-made fabrics/grey fabrics were not supplied under the said invoices, the question of processing of said man-made fabrics/grey fabric and subsequent export of resultant processed fabrics does not arise as well. Therefore, the respondent had procured grey fabrics from many suppliers and such suppliers were subsequently found bogus. Thus, the integrity of the present respondent is always in doubt.

6. The respondent has filed counter-replies on the impugned two Revision Applications inter alia contending as follows:

(i) that the Revenue Department has relied upon the judgement of Hon'ble Gujarat High Court in matter of M/s. Diwan Brother v/s UOI reported in 2013 (295) E.L.T 387 wherein it was held that if several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or non-existent, the petitioner cannot claim rebate merely on the strength of exports made. In this regard, it is stated that in the respondent's case, the suppliers have not been found fake, bogus or non-existent in the final outcome of investigations. The Show Cause Notice dt. 10.05.2010 issued by the DGGI to M/s. Rachna Art Prints Pvt. Ltd. for involvement of fake transaction of grey fabrics has been dropped by the Hon'ble Commissioner (Appeals), CGST & Central Excise, Surat vide Order in Appeal No. CCESA-SRT (APPEALS)/PS-593-595/2019-20 DT. 28.01.2020 and vide OIO No. VIII/Surat/Refund/15/ID/Div-II/2020 dt. 07.08.2020, the Ld. Assistant Commissioner, CGST & Central Excise,

Div-II, Surat has refunded the amount paid during the investigation. Also, the show cause notice dt. 20.10.2008 issued to M/s. Rachna Art Prints Pvt. Ltd. has been dropped vide OIO No. 12/ADJ-JC-AKS/DEM/2019-20 dt. 31.05.2019 by the Ld. Jt. Commissioner, GST and C. Excise, Surat. Further, based on the verification report of JRO, it is stated that M/s. Mullaji Prints Pvt Ltd had filed relevant ER-1 return of March'2008 with the Department and on being inquired from M/s. PEPCO Fabrics Pvt Ltd, they have given the copy of surrender of registration certificate submitted to the Central Excise Department on 04.04.2008. Thus, the ground raised by the Revenue Department without considering the outcome of investigations are factually and legally incorrect.

(ii) The judgement of Hon'ble Supreme Court in case of M/s. Omkar Overseas Ltd relied upon by Revenue Department relates to matter of denial of rebate due to short payment of duty. The Hon'ble Supreme Court held that the benefit of rebate cannot be denied because there is short payment. Benefit can be denied only if there is short payment by reason of fraud, collusion or any wilful misstatement or suppression of facts. In the respondent's case, there is no fraud, collusion or any wilful misstatement or suppression of facts on the respondent's part. Thus, the benefit of rebate cannot be denied to the respondent.

(iii) The respondent reiterates that the Ld. Original Authority (Ld. Deputy Commissioner, Div-V, Surat) allowed the rebate claim in matter of sister concern of the respondent arising out of same order of this Hon'ble RA. The Department has accepted the Order in Original as no appeal has been filed by them against the said Order in Original. Thus, on the same issue once the Department has accepted the Order, filing a review application on the similar matter arising out of same Order of the Ld. RA is against the principles of law.

(iv) The respondent state and submit that interest is applicable as per Section 11BB(2) read with Notification No.67/2003-C.E. (N.T.) dated 12.09.2003. Hon'ble Supreme Court in the case of M/s. Ranbaxy Laboratories Ltd. vs. UOI held that interest under Section 11BB becomes payable on the expiry of a period of three months from the date of receipt of the application under Section 11B(1) ibid. Further Hon'ble Bombay High Court in the case of UOI vs. M/s. Jindal Drugs Ltd. in W.P. No. 9100/2011 vide order dated 30.01.2012 relying on the above said Apex Court judgment held that the liability of Revenue to pay interest under Section 11BB commence from expiry of three months from the date of receipt of application for refund under Section 11B(1) and not the expiry of the said period from the date on which an order for refund is made. Therefore, the respondent is entitled for interest on the rebate claims as per provisions of Section 11BB of Central Excise Act, 1944 after expiry of three months from the date of filing rebate claims till the date rebate is sanctioned. Further Board's Circular No. 670/61/2002-CX dated 01.10.2002 also stipulates grant of interest on delayed rebate. The Commissioner (Appeals) passed Proper Order in this case allowing the interest to the respondent for the rebate claims paid after three months from the date of filing the rebate claims.

7. 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 judicious orders. They further submitted that RAs filed by the Applicant-Department have no specific evidences or grounds. They requested to uphold the Orders passed by the Commissioner (Appeals). No one appeared for the personal hearing on behalf of the Applicant-Department.

8. 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.

9. Government observes that the respondent is a merchant-exporter and had procured 'Man Made Fabrics (processed)' from manufacturer/processor - M/s. Rachna Art Prints Pvt. Ltd. and exported the same in the FY 2007-08. The respondent had filed four rebate claims totally amounting to Rs.5,54,829/- which were rejected on the issue of non-production of evidence of the genuineness of the Cenvat Credit availed by M/s. Rachna Art Prints Pvt. Ltd.

10. The matter ultimately came before Revisionary Authority. After examining the facts of the case, Government concluded that *even though suppliers have allegedly committed fraud, it is necessary to establish beyond doubt that the buyer is knowingly involved in the fraud committed by the supplier which in the present case has not been established on record. Thus, the outcome of the investigation/Show cause Notices issued to various suppliers as well as to the Applicants, if any, is imperative for taking any further decision in the matter.* The matter was therefore, vide Order No. 327-334/2021-CX(WZ)/ASRA/Mumbai dated 29.09.2021, remanded back to the original authority for de-novo adjudication for verification of duty payment in all the rebate claims on the basis of documentary evidence available as well as outcome of the investigations/SCNs.

11. Government observes from the impugned OIO that as far as the aspect of duty payment on export goods in respect of which rebate had been claimed, the jurisdictional range office had reported that in all the concerned ARE-1s, appropriate Central Excise duty had been discharged. However, as regards outcome of investigations, it is stated by OAA that the same is not available with his office. Government finds this approach of OAA frivolous and

amateurish. The OAA should have corresponded with the concerned offices to ascertain the outcome of investigation initiated by them against the respondent. Even, the impugned Revision Application is silent on the issuance of any Order bringing forth the role of respondent in the alleged fraud. It only emphasizes on allegations against the respondent. In this regard, the respondent has contended that *the Show Cause Notice dt. 10.05.2010 issued by the DGGI to M/s. Rachna Art Prints Pvt. Ltd. for involvement of fake transaction of grey fabrics has been dropped by the Hon'ble Commissioner (Appeals), CGST & Central Excise, Surat vide Order in Appeal No. CCESA-SRT (APPEALS)/PS-593-595/2019-20 DT. 28.01.2020 and vide OIO No. VIII/Surat/Refund/15/ID/Div-II/2020 dt. 07.08.2020, the Ld. Assistant Commissioner, CGST & Central Excise, Div-II, Surat has refunded the amount paid during the investigation.* The contention disproves the findings of OAA.

12. The case laws relied upon by the Applicant-Department are of no relevance in the instant matter as in all those cases it was proved beyond doubt that the suppliers of the grey fabric were non-existent or the claimant was found complicit in the fraud.

13. Government notes that no discrepancies have been observed by the Applicant-Department in respect of impugned exports or compliance of conditions stipulated under Section 11B of Central Excise Act, 1944 (CEA) or Rule 18 of Central Excise Rules, 2002 (CER) or notifications issued thereunder. 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 Government revenue, which can be used to cover up any future exigency. The AA has also concluded on similar lines –

> *Therefore in the absence of any contrary evidence and failure on the part of adjudicating authority to substantiate their Claim that the processor i.e.*

M/s. Rachna Art Prints Ltd. has availed cenvat credit on the basis of invoices issued by the fake/bogus grey suppliers the records put forth before me by the appellant compel me to hold that the genuineness of cenvat credit availed and utilized for the payment of duty at the end of the processor/manufacturer i.e. Rachna Art Prints Pvt Ltd is no more open to question as the Investigation/SCN has been concluded in favour of processor/manufacturer. In other words, involvement of M/s. Rachna Art Prints Pvt Ltd in fake transaction of grey fabrics has not been proved by the department.

Therefore, Government finds no reason to modify the impugned OIA No. CCESA-SRT/(Appeals)/PV-040/2022-23 dated 31.05.2022.

14. Government observes that the other Revision Application has been filed on the issue of interest to be paid to the respondent under Section 11BB of CEA for the delay in sanction of impugned four rebate claims totally amounting to Rs.5,54,829/-. The Applicant-Department has contended same arguments in the Revision Application i.e., the respondent had procured grey fabrics from many suppliers who were subsequently found bogus. Thus, the integrity of the present respondent is always in doubt and therefore the judgment of the Hon'ble Supreme Court of India, in case of M/s. Ranbaxy Laboratories Limited, Manisha Pharma Plast Pvt. Ltd. as well as Circular No. 670/61/2002-CX dated 01.10.2002, issued by the Central Board of Excise and Customs, New Delhi, (based on which AA had allowed the appeal) do not squarely appear relevant.

15. In this regard, Government observes that once the rebate claim is held as admissible under Section 11B of the CEA, interest liability starts after the expiry of three months from the date of receipt of application for rebate in the office of rebate sanctioning authority, in terms of Section 11BB ibid and the judgments relied upon by the AA affirm this fact. Therefore, Government

upholds the impugned OIA No. CCESA-SRT/(Appeals)/PV-104/2022-23 dated 12.10.2022.

16. The impugned Revision Applications are disposed of on the above terms.

Shrawan 20/11/23

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

ORDER No. 384-/2023-CX (WZ)/ASRA/Mumbai dated 20.11.23
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To,

M/s. Vandana Overseas,
Plot No. 410/B, G.I.D.C.,
Pandesara, 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