

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 195/214/13-RA

Date of Issue: 03.12.2018

ORDER NO. 384 /2018-CX (WZ) /ASRA/Mumbai DATED 02.11.2018  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF  
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Pearl Exports,  
Plot No. 215-B, 3<sup>rd</sup> Floor,  
Udhna Udyog Nagar,  
Udhna, Surat.

Respondent : Commissioner of Central Excise (Appeals), Mumbai-III

Subject : Revision Applications filed, under section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
No. BC/374/RGD(R)/2012-13 dated 31.10.2012  
passed by the Commissioner of Central Excise (Appeals)  
Mumbai-III.



**ORDER**

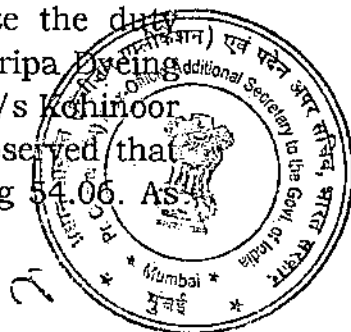
This Revision Application has been filed by M/s Pearl Exports, Surat (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/374/RGD(R)/2012-13 dated 31.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.

2. Brief facts of the case are that the applicant is merchant exporter and has filed nine rebate claims totally amounting to Rs. 9,12,685/- (Rupees Nine Lakh Twelve Thousand Six Hundred Eighty Five Only) under Rule 18 of Central Excise Rules, 2002 in respect of goods manufactured by different manufacturers / processors. The details are as under :-

Sr. No.	RC No. / Date	ARE-1 No. / Date	Invoice No. / Date	Amount Claimed (Rs.)
1	34577/13.03.2006	71/05-06 dt. 02.08.2005	210/02.08.2005	89,358/-
2	34578/13.03.2006	72/05-06 dt. 04.08.2005	219/04.08.2005	63,832/-
3	34576/13.03.2006	68/05-06 dt. 19.07.2005	200 & 201 /19.07.2005	65,709/-
4	34575/13.03.2006	34/05-06 dt. 09.08.2005	91/09.08.2005	96,890/-
5	30382/02.01.2006	78/05-06 dt. 22.07.2005	E-14/22.07.2005	70,926/-
6	30383/02.01.2006	77/05-06 dt. 22.07.2005	E-16/22.07.2005	1,03,893/-
7	30384/02.01.2006	22/05-06 dt. 05.07.2005	49/05.07.2005	1,01,325/-
8	30385/02.01.2006	23/05-06 dt. 05.07.2005	50/05.07.2005	1,02,540/-
9	30386/02.01.2006	16/05-06 dt. 16.06.2005	27/15.06.2005	218212/-
				9,12,685/-

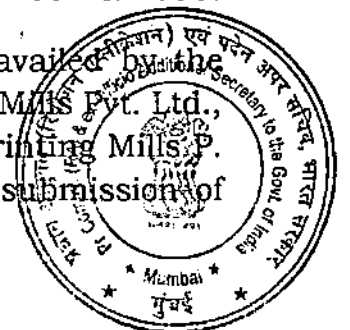
3. The rebate sanctioning authority while scrutinizing the said rebate claims observed that :

3.1 Since the export has been undertaken by the merchant exporter i.e. M/s Pearl Exports, it is required to scrutinize the duty paying document of the processors M/s Shree Saikripa Dyeing & Printing Mills Pvt. Ltd., M/s Koyal Textile Mills, M/s Kohinoor Dyeing & Printing Mills P. ltd. Prima facie it was observed that the goods cleared are falling under Chapter heading 54.06. As



per Notification No. 30/2004-CE dated 09.07.2004, it was observed that the goods cleared by the processors are covered under Sr. No. 5 of the said notification wherein the goods are exempt from the whole of the duty of excise leviable under thereon under Central Excise Act, 1944. Consequently, the processor ought not to have cleared the goods on payment of duty. Thus since the payment of duty on the goods exported was not warranted, the claim for rebate filed by the merchant exporter cannot be sanctioned.

- 3.2 The chapter sub-heading mentioned in the invoice did not tally with the chapter subheading declared in the shipping bill. The duty payment certification in respect of RC No.34575, 30386, 30385, 30784, 30382 & 30383 were submitted by the applicant in reply to deficiency memo.
- 3.3 The Bank Realization Certificate has been submitted in respect of some of the claims.
- 3.4 The name & designation of the Authorized Signatory not being mentioned in ARE-1.
- 3.5 In respect of RC No. 34577, the seal No. appearing on the shipping bill did not tally with that of the bill of lading.
- 3.6 The applicant did not submit the NOC /disclaimer certificate alongwith the rebate claim.
- 3.7 The shipping bill, Mate Receipt, Bill of Lading did not bear the certification as true copy.
- 3.8 No self sealing / self certification furnished by the applicant.
- 3.9 Declaration at Sr. No. 3 & 4 on the face of the original and duplicate copies of ARE-1 was not given.
- 3.10 The Superintendent, Central Excise, Range-IV, Division-III, Surat-I has informed that 3 SCNs have been issued to M/s Shree Saikripa Dying & Printing Mills Pvt. Ltd., who is one of the processor in the instant case for availing inadmissible or the fraudulent Cenvat Credit on the invoices issued by the fake/bogus suppliers of grey fabrics during period 2004 & 2005.
- 3.11 To verify the authenticity of the Cenvat Credit availed by the processors M/s Shree Saikripa Dyeing & Printing Mills Pvt. Ltd., M/s Koyal Textile Mills, M/s Kohinoor Dying & Printing Mills Pvt. Ltd., an opportunity was given to applicant for submission of



documents regarding the genuineness of the availment of cenvat credit on grey fabrics. The applicant did not submit the same.

In view of above observations, the rebate sanctioning authority vide Order in Original No. 2662/11-12/DC(Rebate)/Raigad dated 31.03.2012 rejected said nine rebate claims amounting to Rs. 9,12,685/- (Rupees Nine Lakh Twelve Thousand Six Hundred Eighty Five only) filed by the applicant.

4. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III. The Commissioner (Appeals) in his Order No. BC/374/RGD(R)/2012-13 dated 31.10.2012 observed that

- 4.1 The manufacturers have not availed the benefit of Notification No. 30/2004 dated 09.07.2004. The said notification is a conditional and hence manufacturer is at liberty to avail or not to avail the same.
- 4.2 It is fact that unless the accumulated credits are genuine, the duty paid there from cannot be termed as actually duty paid. Hence the rejection on this count is not without merits.
- 4.3 The reason for rejection of the rebate claim on the ground that the Chapter subheading shown in invoices did not tally with that of shipping bills. The onus is on the applicant to prove that the goods cleared for export were the one which have been exported.
- 4.4 Reasons for rejection on the ground that there was no mention of self sealing certificate on ARE-1s, that the seal No. on the shipping bills did not tally with the Bill of Lading, no certification of true copy of the shipping bills, mate receipts and bill of lading, no declaration in respect of Sr. No.3 & 4 on the face of ARE-1as required under Act & Rules is proper for the reason that the exporter is supposed to follow the conditions laid down by the Government in order to avoid any fraudulent granting of rebate or refund.

In view of above observations, the appellate authority rejected the appeal filed by the applicant.



5. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 5.1 the applicant is merchant exporter and have exported duty paid goods and then filed the rebate claims. Thus the rejection of rebate claims is not sustainable.
- 5.2 the issue of sanctioning the rebate claim to the merchant exporter have been settled by the High Court of Gujrat in the case of Roman Overseas against which the appeal was preferred by the Revenue to the Supreme Court which have been rejected / dismissed.
- 5.3 the revision authority have settled the principle of law that when the exporter is not party to fraud either at manufacturer's end, the rebate claims for the goods exported cannot be denied. The said principle is laid down by the Gujrat High Court in the case of Prayagraj Dyeing and Printing Mills.
- 5.4. the merchant exporter is not the buyer of the gray fabrics for supplying to the processors for processing of the fabrics exported.
- 5.5 the ratio of Shree Shyam International is squarely applicant in the instant case.
- 5.6 the lower authorities have erred in rejecting the rebate claims on technical deficiency. The deficiencies are always rectifiable mistakes.
- 5.7 the deficiency memo cum show cause notice dated 03.02.2012 was issued to the applicant for the rebate claims filed during January & March, 2006 and the general law of limitation for issuance of SCM is one year when no time limit have been prescribed for issuance of the SCN. In the instant case, SCN was issued after 5 years which is not maintainable in law considering the judgment in the case of Ani Elastic Industries reported in 2008 (222)ELT 340 (Guj.)
- 5.8 the ratio of judgment in Jhawar International 2012 (281) ELT 460 (GOI) referred by the appellate authority is not applicable to facts of the case.
- 5.9 the appellate authority had erred in relying on the judgment of Tribunal in the case of Sheela dyeing reported in 2007 (219)ELT



348 (Tri. Ahmd) which is in relation to fraud committed by the manufacturer where as in the present case the applicant is merchant exporter.

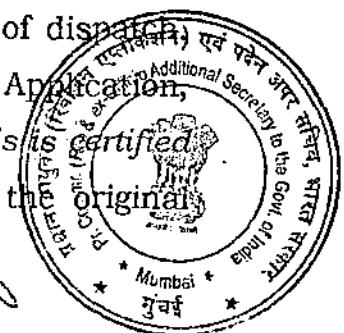
5.10 they requested to allow the revision application with consequential relief.

6. A Personal hearing held in this Revision Application was attended by Shri K.I. Vyas, Ms. Deepali Kamble and Shri Raj Vyas, Advocates on behalf of the applicant. They reiterated the submission filed on the date of personal hearing and pleaded that in view of the same, the Revision Application may be allowed and Order in Appeal be set aside.

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 Para (3)(a)(xi) Notification No. 19/2004-C.E. (N.T.) dated 6-9-2004 provides, where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.

9. Government observes that the procedure for sealing by Central excise Officer or Self-Sealing and Self Certification procedure has been prescribed for identification and correlation of export goods at the place of dispatch. From the copies of the ARE-1s enclosed to the Revision Application, Government observes that all the ARE-1s bear the remark "This is certified that the goods have been packed in my presence". However, the original



adjudicating authority has observed that there is no certificate with regard to the sealing of the said export goods and hence rejected the rebate claims.

10. Government observes that Para (3)(a)(xi) of Notification dated 19/2004 CE(NT) dated 6-9-2004 provides as under:

*where the exporter desires self-sealing and self-certification for removal of goods from the factory or warehouse or any approved premises, the owner, the working partner, the Managing Director or the Company Secretary, of the manufacturing unit of the goods or the owner of warehouse or a person duly authorized by such owner, working partner or the Board of Directors of such Company, as the case may be, shall certify all the copies of the application that the goods have been sealed in his presence, and shall send original and duplicate copies of the application along with goods at the place of export, and shall send triplicate and quadruplicate copies of application to the Superintendent or Inspector of Central Excise, having jurisdiction over the factory or warehouse, within twenty-four hours of removal of the goods.*

Para (3) (a)(xii) of the said Notification says that

*in case of self-sealing, the Superintendent or Inspector of Central Excise shall, after verifying the particulars of the duty paid or duty payable and endorsing the correctness or otherwise, of these particulars, send to the officer with whom rebate claim is to be filed, or send to Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration.*

Then, Paras (3)(a)(xiii) and (xiv) of the said Notification, read as under :

*“(xiii) On arrival at the place of export, the goods shall be presented together with original, duplicate and quadruplicate (optional) copies of the application to the Commissioner of Customs or other duly appointed officer;*

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*(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars of export :*

*Provided that if the Superintendent or Inspector of Central Excise sealed packages or container at the place of dispatch, the officer of customs shall inspect the packages or container with reference to declarations in the application to satisfy himself about the exportability thereof and if the seals are found intact, he shall allow export."*

A combined reading of the aforesaid paras reveals that following of proper procedure prescribed in the Notification mentioned above, by the assessee opting for self-sealing of the goods is to ensure the nexus between the goods cleared under ARE-1s and the goods actually exported. In the instant case the applicant has followed the procedure for self sealing of export goods, and has certified on each ARE-1 that the goods have been packed in his presence. Moreover the endorsements of Customs Officers at the port of export, on part "B" of said ARE-1s is a sufficient corroboratory evidences that goods covered vide impugned ARE-1s have actually been exported vide impugned export documents, as envisaged vide Paras (3)(a) (xiv) of the Notification stated supra.

11. In view of the above, Government holds that the applicant has reasonably followed the procedure prescribed for self sealing / self-certification and that the correlativity of the goods cleared under the impugned ARE-1s and those exported is established and therefore sets aside the impugned Order in Appeal so far as it relates to rejection of rebate claims on these grounds.





12. As regards another issue for rejection of rebate claims, Government observes that the Commissioner (Appeals) at page 3 of the impugned Order in Appeal has observed that:

*“One of the major reason for rejection of the rebate claim is that the processors from whom the goods were purchased have availed Cenvat credit on bogus invoices and hence no duty is paid on the finished goods from the fraudulently availed Cenvat credit. It is a fact that unless the accumulated credits are genuine, the duty paid there from cannot be termed as actually duty paid. Hence the rejection on this count is not without merits for the reason that the Adjudicating Authority has specifically mentioned that 3 Show Cause Notices involving duty amount of Rs.210.42 Lakh were issued to M/s Saikrupa Dyeing & Printing Mills Pvt. Ltd. who is one of the processor in the instant case for availing inadmissible or the fraudulent Cenvat credit on the basis of the invoices issued by the fake/bogus suppliers of grey fabrics.”*

13. Government observes that M/s Saikrupa Dyeing & Printing Mills Pvt. Ltd. who is one of the processor in the instant case was issued 3 show cause notices involving duty of Rs.210.42 Lakhs for availing inadmissible or the fraudulent Cenvat credit on the basis of the invoices issued by the fake/bogus suppliers of grey fabrics and these show cause notices were confirmed along with interest and penalty.”

14. Government observes that the applicant has contended that the revision authority have settled the principle of law that when the exporter is not party to fraud either at manufacturer's end or input supplier's end the rebate claims for the goods exported cannot be denied and that the said principle is laid down by the Gujarat High Court in the case of Prayagraj Dyeing and Printing Mills [2013 (290) E.L.T. 61 (Guj.)].

15. Government in the instant case observes that by virtue of the confirmation of demand of duty against M/s Saikrupa Dyeing & Printing Mills Pvt. Ltd. from whom the applicant purchased the goods exported



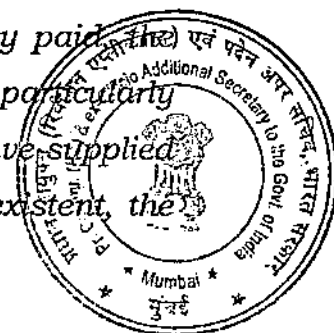
shows that even the transaction between manufacturer (processor) and merchant-exporter (the applicant) also turns out to be a bogus.

16. Hon'ble High Court Gujarat in Special Civil Application No. 13932 of 2011, filed by M/s Poddar Exports (India) decided on 2-7-2014 observed that

*Under the circumstances, when the transactions between the manufacturer (processor) and the merchant exporter (petitioner) are found to be bogus and when it has been established that the purported suppliers are fake and fictitious persons and the entire transaction is found to be only billing activities for the purpose of taking undue advantage of the Cenvat credit and/or the rebate, no error has been committed by the Authorities below in denying the rebate claims claimed by the petitioner.*

**5.1** Now, so far as the contention on behalf of the petitioner that as the petitioner had exported the goods on payment of duty the petitioner is entitled to rebate of Excise duty is concerned, the same arguments came to be considered by the Division Bench of this Court in Special Civil Application No. 13931/2011 [2013 (295) E.L.T. 387 (Guj.)]. At that stage also, the petitioner of that petition heavily relied upon the decision of this Court in the case of D.P. Singh (supra). While not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench of this Court 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 either fake, bogus or nonexistent, the*

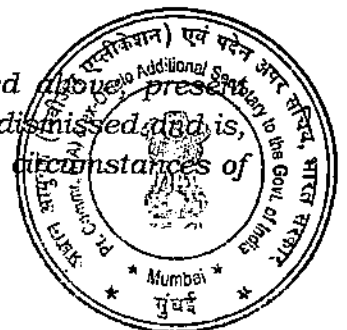


*petitioner cannot be claimed rebate merely on the strength of exports made."*

17. Government observes that though the facts of the aforesaid case are not the same, fact remains that in the present case also the duty paid nature of the grey fabrics used in the manufacture of goods exported has not been established. Moreover, as it appears in the Order in Original (para 48) dated 31.03.2012 passed by the Original adjudicating authority, the Range Supdt. has clearly revealed that the duty which was supposedly paid on the export goods was out of the Cenvat Credit generated out of bogus input documents of grey fabrics suppliers. Government also observes that the case law relied upon by the applicant has been distinguished by the Hon'ble High Court Gujarat in its aforesaid Order of M/s Poddar Exports (India) in the following words:

*5.2 Now, so far as the reliance placed upon the decision of the Division Bench of this Court in the case of D.P. Singh (supra) is concerned, the said decision shall not be applicable to the facts of the case on hand. It is required to be noted that in the present case even the transactions between the petitioner and M/s. Universal Textiles (supra) are found to be fake transactions. Merely because M/s. Raju Synthetics Pvt. Ltd. was not declared as fake company/supplier, it makes no difference. As such there is a distinction between the fake transaction and the fake company. When the transactions between the petitioner and the supplier were found to be fake transactions and it was found that the petitioner has failed to establish and prove that the petitioner used the inputs/goods in manufacturing of even the goods which came to be exported on which the actual Excise duty or paid, the petitioner shall not be entitled to the rebate of the duty, which is not proved to be paid. It is required to be noted that in the present case the supplier of the petitioner - M/s. Raju Synthetics Pvt. Ltd. was alleged to have procured/purchased the goods from M/s. Rangroop Texturiser, M/s. Om Textiles and M/s. Shree Ganesh Textiles were declared as fake and non-existent for which their names were put in the alert circular by the Commissioner. Under the circumstances, the petitioner shall be entitled to the rebate as claimed. Our aforesaid view is supported by the decision of the Division Bench of this Court in the case of Multiple Exports Pvt. Ltd. v. Union of India reported in 2013 (288) E.L.T. 331 (Guj.).*

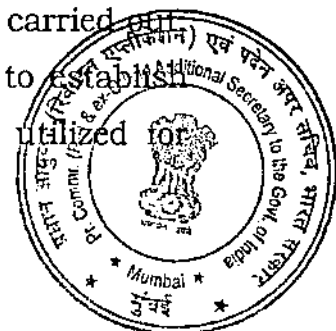
6. In view of the above and for the reasons stated above, the Special Civil Application fails and the same deserves to be dismissed and is, accordingly, dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.



18. In view of above, Government finds that duty paid character of the grey fabrics in respect of processor M/s Saikrupa Dyeing & Printing Mills Pvt. Ltd. was not proved and as such, Government finds no infirmity in the impugned Order-in-Appeal to the extent it rejects the claim of rebate of duty paid by M/s Saikrupa Dyeing & Printing Mills Pvt. Ltd. (against whom the recovery proceedings were initiated and confirmed) and therefore upholds the same.

19. However, the Appellate authority in the impugned Order in Appeal has not adduced any evidence for upholding the Order in Original rejecting the rebate claims in respect of the other suppliers of the applicant, namely M/s Koyal Textiles Mills and M/s Kohinoor Dying and Printing Mills Pvt. Ltd. and there are no findings that the transactions between them and their grey suppliers were bogus. There are no allegations and evidence to show that these two suppliers were party to the fraud in non-payment of excise duty or had knowledge about them and when no such facts emerge, Government has no hesitation in setting aside the impugned Order in Appeal so far as it upholds rejection of the rebate of duty paid by these two processors. Government also observes that there is nothing on record to show that there was any further investigation/ Orders in original in this case by the Central Excise Commissionerate. Government therefore, is of considered opinion that the Order in Original No. 2662/11-12/DC (Rebate)/Raigad dated 31.03.2012 passed by the Deputy Commissioner (Rebate) Central Excise, Raigad lacks appreciation of evidence to this extent and hence is unjustifiable. Hence denial of rebate based on presumptions and assumptions is not legally sustainable.

20. In view of discussions and findings elaborated above, Government is of the considered opinion that a detailed verification by the original authority into the allegations that "*duty paid by these two processors out of accumulated Cenvat Credit not free from doubt*" is required to be carried out. This verification from the original authority is also necessary, to establish the genuineness of the Cenvat credit availed & subsequently utilized for



payment of duty towards the above exports. The applicant is also directed to submit relevant records /documents to the original authority in this regard.

22. Government also observes that the applicant has justifiably replied to / cured many deficiencies in rebate claims such as

- discrepancy in the classification of goods as reflected differently in the Shipping Bills and Central Excise invoices,
- discrepancy in the seal No. appearing on the shipping bill and one on the bill of lading in respect of RC No. 34577 and
- non submission of the Bank Realization Certificate in respect of some of the claims,
- non mentioning of the name & designation of the Authorized Signatory in ARE-1,
- non submission of NOC /disclaimer certificate alongwith the rebate claim;
- no certification as true copy on the shipping bill, Mate Receipt, Bill of Lading and
- no declaration at Sr. No. 3 & 4 on the face of the original and duplicate copies of ARE-1, being the condonable procedural lapses.

and hence rejection of the rebate claims on this count, upheld vide impugned Order in Appeal, needs to be set aside.

23. In view of discussions and findings elaborated above, Government

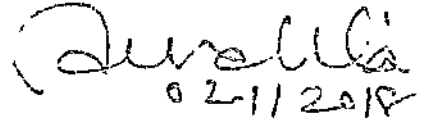
- (i) upholds the Order in Appeal No. BC/374/RGD(R)/2012-13 dated 31.10.2012 relating to rejection of rebate of duty paid by M/s Saikrupa Dyeing & Printing Mills Pvt. Ltd.,
- (ii) sets aside the Order in Appeal No. BC/374/RGD(R)/2012-13 dated 31.10.2012 upholding the rejection of the rebate claims on all other grounds,

and remands the case back to the original authority for ~~adjudication/ verification~~ **denovo** as stated at paras 19 & 20 supra. ~~The applicant~~



is also directed to submit all the relevant records/documents to the original authority in this regard. The original authority will complete the requisite verification expeditiously and pass a speaking order within Eight weeks of receipt of said documents from the applicant. The impugned order in Appeal No. BC/374/RGD(R)/2012-13 dated 31.10.2012 is modified to this extent.

19. Revision application is disposed off in above terms.



(ASHOK KUMAR MEHTA)

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

ORDER No. 384/2018-CX (WZ) /ASRA/Mumbai DATED 02.11.2018.

To,  
M/s Pearl Exports,  
215B, 3<sup>rd</sup> floor,  
Udhna Udyog Nagar, Udhna,  
Surat - 394214.

Copy to:

1. The Commissioner of CGST & CX, Navi Mumbai.
2. The Commissioner of CGST & CX, (Appeals), Raigad.
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX, Raigad.
4. Shri Kaushik I. Vyas, 401, Shivanjali Apartment, Rangeela Park, Ghod Dod Road, Surat.
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.

