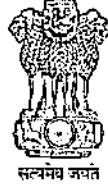


REGISTERED SPEED POST



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. 195/605/2013-RA / 2430

Date of Issue: 20/12/2018

ORDER NO. 421 /2018-CX (WZ) /ASRA/Mumbai DATED 30.11. 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 PSL TEX Styles Pvt. Ltd.  
147, Mittal Estate No. 6,  
Andheri Kurla Road, Andheri,  
Mumbai - 400 059.

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/655/RGD(R)/2012-13 dated 22.03.2013  
passed by the Commissioner of Central Excise (Appeals)  
Mumbai-III.



**ORDER**

This Revision Application has been filed by M/s PSL TEX Styles Pvt. Ltd. , Andheri, Mumbai - 400 059 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/655/RGD(R)/2012-13 dated 22.03.2013 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 five rebate claims totally amounting to Rs. 3,38,204/- (Rupees Three Lakh Thirty Eight Thousand Two Hundred Four 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	14531/19.10.06	51/03.10.05	117/03.10.05	117948
2	27152/09.03.07	48/25.01.06	131/25.01.06	115576
3	27626/21.03.07	586/21.03.06	586/21.03.06	42197
4	27627/21.03.07	41/31.08.06	43/31.08.06	10692
5	27628/21.03.07	42/31.08.06	44/31.08.06	51791
				338204

3. The above referred rebate claims were scrutinized by the rebate sanctioning authority and a deficiency memo cum show cause notice cum call for personal hearing letter F. No. V/15-321/Rebate/PSL/RGD/12.13 dated 09.10.2012 was issued to the applicant communicating the following deficiencies :-

3.1 Rebate Claim No. 14531 dated 19.10.2006 :

(i) Original Duplicate & Triplicate ARE-1 has been submitted with the said claim.

3.2 Rebate Claim No. 27152 dated 09.03.2007 :

(i) Name & Designation of the authorized signatory of the manufacturer has not been mentioned on the Central Excise Invoice issued under Rule 11 of the Central Excise Rules, 2002.



- (ii) Name & designation of the authorized signatory of the manufacturer as well as exporter has not been mentioned on the face of ARE-1.
- (iii) Attested copy of Mate Receipt has not been submitted.
- (iv) Declaration under Rule 18 has not been furnished by the claimant.
- (v) Vessels Name & Voyage No. appeared in the shipping bill does not match with the bill of lading.

3.3 Rebate Claim No. 27626 to 27628 dated 21.03.2007 :

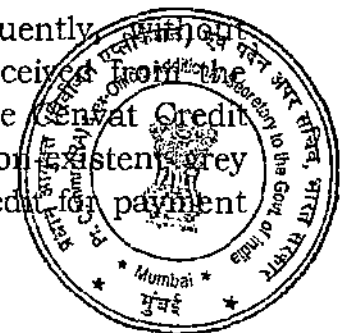
- (i) Central Excise Invoice issued under Rule 11 has not been submitted in respect of Rebate Claim No. 27626.
- (ii) Name & designation of the authorized signatory of the manufacturer as well as exporter has not been mentioned on the face of ARE-1.
- (iii) Disclaimer has not been given by the manufacturer to the exporter for filing rebate claim.
- (iv) Declaration under Rule 18 has not been furnished by the claimant.
- (v) Seal No. appeared in the shipping bill does not match with the mate receipt.
- (vi) Self supervision / Certificate has not been given on the face of ARE-1.
- (vii) Shipping bill / bill of lading / mate receipt and BRC has not been submitted in r/o RC No. 27627 & 27628.

3.4 Further the rebate sanctioning authority also observed that the goods exported by the applicant were eligible for full exemption vide Notification No. 30/2004-CE dt. 09.07.2004 & thereby covered under Section 5A(1A) of the Central Excise Act, 1944, the implication of which was that duty ought not to have been paid on the goods cleared for export from their processing units.

4. The adjudicating authority rejected all the above five rebate claims filed by the applicant on following grounds :-



- 4.1 No original, duplicate or triplicate copies of any ARE-1 were submitted along with the claim. The applicant has only submitted the copy of the acknowledgement of submission of the same.
- 4.2 the applicant have submitted only reconstructed copies of ARE-1 and invoices along with claim.
- 4.3 the excise invoice has not been submitted with Rebate Claim No. 27626 filed by the claimant, hence the said claim merits rejection.
- 4.4 the applicant has not submitted the declaration under Rule 18 that no separate claim / double claim has been submitted for the rebate of duty paid / has been submitted with two rebate sanctioning authority to avoid any fraud.
- 4.5 the goods having being cleared without sealing before the clearance of export, the said claims are liable for rejection.
- 4.6 the claimant has not produced certificates from jurisdictional Range Supdt. in charge of the processor's unit regarding duty payment on the export clearances covered under the subject rebate claims.
- 4.7 the manufacturer has not produced the disclaimer certificate.
- 4.8 in some of the claims, the vessel name & voyage numbers as mentioned in the shipping bill is different from the vessel name & voyage number mentioned in the bill of lading. In respect of the RC No. 27152, the attested copy of the mate receipt is not submitted. It is necessary to mention correct details of vessel name, voyage no., container no., and seal no. on all the relevant documents pertaining to the particular export consignment. Hence, the claims is liable for rejection.
- 4.9 the applicant had not submitted copies of BRC.
- 4.10 The DGCEI and Central Excise Authorities have detected various cases of non-existent / bogus firms who were purportedly either supplying grey fabrics or processing grey fabrics. Such firms had issued bogus invoices with the intention of passing fraudulent 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 the non-existent grey fabric suppliers and utilised the said bogus credit for payment.



of Central Excise duty on exports goods. As such, though the names of the exporter and their processors are not listed in the Alert list issued by Central Excise Authority, it was necessary that the duty paid nature of the export goods is ascertained. Therefore an opportunity was given to the applicant for submission of documents / records regarding genuineness of the Cenvat Credit availed by the manufacturer on the inputs used in manufacture of exported goods. However, the applicant have submitted only photocopies of RG23-A Pt. II without the endorsement of Range officers. The Range office, on enquiry, had submitted the copies of invoices and further informed that it is not possible on the basis of the grey fabrics invoices to co-relate as to grey fabric of which invoice, was cleared under which ARE-1 after processing.

4.11 In view of above the adjudicating authority rejected all the rebate claims filed by the applicant.

5. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai-III. The Commissioner (Appeals) in his Order No. BC/655/RGD(R)/2012-13 dated 22.03.2013 observed that:

- 5.1 the applicant had not submitted copies of the relevant export documents.
- 5.2 the applicant could not submit the original, duplicate & triplicate copies of ARE-1 as they were lost. The submission of said copies of ARE-1 is mandatory for verifying the claim.
- 5.3 the letter dated 19.10.2006 of the applicant is vague and does not specify which documents were filed originally and which documents were filed along with the letter dated 19.10.2006.
- 5.4 the various export details on export documents are not tallying.
- 5.5 BRC is not submitted.

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

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



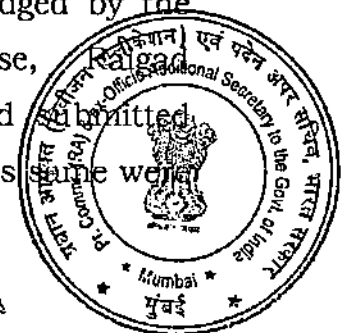
- 6.1 The adjudicating authority has failed to appreciate that the entire case revolves around the misplacement / loss of documents in the Department.
- 6.2 The office of the DC, who misplaced the original rebate claims and are trying to shift the blame on the appellants for the purpose of denying the genuine claims of the appellant.
- 6.3 The claims were rejected after 6 years which is totally unjust and illegal.
- 6.4 the rebate / drawback etc. are export oriented schemes and unduly restricted and technical interpretation of procedure etc. is to be avoided.

The applicant requested to set aside the order in appeal and order in original.

7. A Personal hearing held in this Revision Application was attended by Shri Pravin Dave, Director and Shri Sajimon K.C., Export Manager of the applicant Company. They reiterated the submission filed through revision application and written submissions filed on the dated of personal hearing and pleaded that the substantive benefits of the rebate cannot be denied because of technical infractions which are trivial. Hence, it was pleaded that order in appeal be set aside and the Revision Application may be allowed

8. 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.

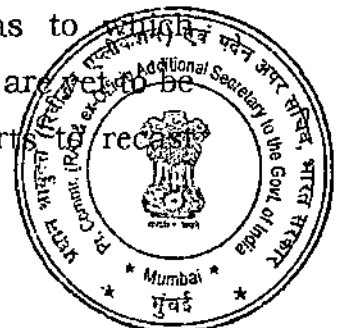
9. Government observes that the subject five rebate claims were filed by the applicant with the department on the dates mentioned against RC No. in the table at Para 2 supra above. The Government finds that the applicant had submitted Original, Duplicate and Triplicate copies of ARE-1 (except in respect of ARE- 51 dated 03.10.2005), Excise Invoices, Self Attested copies of Bill of Lading / Shipping Bills / Disclaimer Certificates in respect of these claims as evident from the submission letters duly acknowledged by the office of the Maritime Commissioner, Central Excise, Commissionerate. It is also observed that the applicant had submitted self attested copies of ARE -1 No. 51/ 03.10.2005 (RC No. 14531) as same were



lost by the CHA. In this connection, the Notification No. 19/2004 CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 requires the applicant to file following documents along with rebate claim to the office of Maritime Commissioner.

1. A request on the letterhead of the exporter containing claim of rebate, ARE-1 numbers and dates, corresponding invoice numbers and dates, amount of rebate on each ARE-1 and its calculations.
2. Original copy of ARE-1.
3. Invoice issued under Rule 11 of CER, 2002
4. Self attested copy of Shipping Bill (EP copy) and Bill of lading/ Airway Bill.
5. Proof of duty payment.
6. Disclaimer certificate. (in case claimant is other than exporter)
7. Any other document in support of the refund claim.

Therefore, Government finds that the requisite documents were filed by the applicant at the time of submission of the respective rebate claims as evident from the acknowledged copies of submissions available on record. Hence there is a reason to believe that the same were misplaced in the office of the rebate sanctioning authority. The Government also observes that the deficiencies in the rebate claims were communicated to applicant by the rebate sanctioning authority vide Deficiency Memo dated 09.10.2012 i.e. after almost 5 to 6 years from the date of their submission. The reasons for such inordinate delay had not been discussed while passing the adjudicating order. In the event, rejection of the rebate claims for non submission of documents by the applicant would not meet ends of justice. Instead, the rebate sanctioning authority should have opted to recast the rebate claims based either on the submissions of the applicant or procuring the same from any other reliable sources in each case. However, no efforts in this regard seem to have been made by the department and the entire issue revolves around the possibilities and assumptions as to which document were originally submitted by the applicant and which are to be submitted. As such, rejection of the claims without any efforts to recast



them would not be legal and proper. The Government therefore directs the rebate sanctioning authority to recast the lost claim papers for processing them on merits and not to reject them solely on this ground especially when the applicant has proof of submission of the same to the department.

10. As regards sealing provisions, the 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. In this regard, 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;*

*(xiv) The Commissioner of Customs or other duly appointed officer shall examine the consignments with the particulars as cited in the*





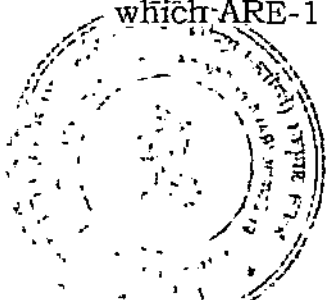
*application and if he finds that the same are correct and exportable in accordance with the laws for the time being in force, shall allow export thereof and certify on the copies of the application that the goods have been duly exported citing the shipping bill number and date and other particulars 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.

11. In view of the above, Government holds that the claims where the applicant has not followed the procedure prescribed for self sealing / self-certification and that the corelatibility of the goods cleared under the impugned ARE-1s and those exported cannot be established are liable for rejection on these grounds.

12. Further, the Government finds that the adjudicating authority at para 7 of original order has stated that though the names of the exporter and their processors are not listed in the Alert list issued by Central Excise Authority, it is necessary that the duty paid nature of the export goods is ascertained. Therefore an opportunity was given to the applicant for submission of documents / records regarding genuineness of the Cenvat Credit availed by the manufacturer on the inputs used in manufacture of exported goods. However, the applicant has submitted only photocopies of RG23-A Pt. II without the endorsement of Range officers. It is pertinent to note that the Range office, on enquiry, had submitted the copies of invoices and further informed that it is not possible on the basis of the grey fabrics invoices to co-relate as to grey fabric of which invoice, was cleared under which ARE-1 after processing.



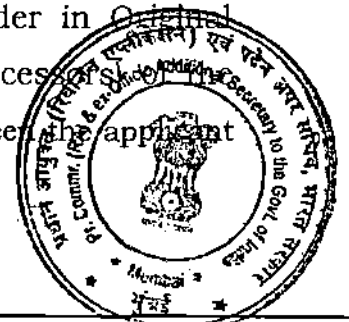
13. In this connection, the Hon'ble High Court Gujarat in Special Civil Application No. 13932 of 2011, filed by M/s Poddar Exports (India) decided on 2-7-2014 observed that

*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.*

*Now, so far as the contention on behalf of the petitioner that as then 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.”*

14. The Government observes that though the facts of the aforesaid case are not the same, it remains in the present case also that the duty paid nature of the grey fabrics used in the manufacture of goods exported has not been established. 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 suppliers (processor) applicant and there are no findings that the transactions between

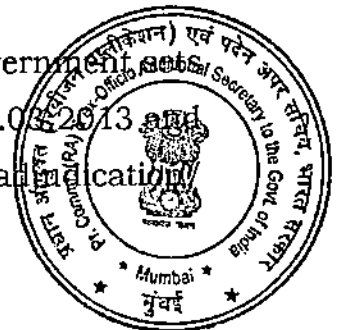


and their grey suppliers were bogus. There are no allegations and evidence to show that the suppliers were party to the fraud in non-payment of excise duty or had knowledge about them and when no such facts emerge, Government has no hesitation in setting aside the impugned Order in Appeal so far as it upholds rejection of the rebate of duty paid by the processors. Government also observes that there is nothing on record to show that there was any investigation/ Orders in original in this case by the Central Excise Commissionerate. Government therefore, is of considered opinion that the Order in Original No. 2374/12-13/DC (Rebate)/Raigad dated 17.12.2012 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 on this issue.

15. 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 the 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.

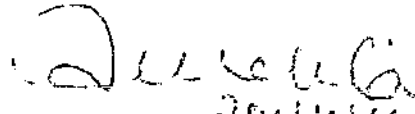
16. The Government also finds that the proviso to Notification No. 30/2004-C.E. makes it abundantly clear that the exemption contained in the Notification is not applicable to the goods in respect of which credit of duty on inputs has been taken under the provisions of the Cenvat Credit Rules, 2004. However, the applicant has not submitted any proof to show that they are not falling under the ambit of Notification No. 30/2004 ibid. Even the relevant ARE-1s had not been submitted alongwith appeal to prove the availment of Cenvat credit. Therefore, the applicants were exempt under Notification No. 30/2004-C.E and hence this ground for rejection of rebate claim had to be upheld.

17. In view of discussions and findings elaborated above, Government has set aside the Order in Appeal No. BC/655/RGD(R)/12-13 dated 22.02.2013 and remands the case back to the original authority for denovo adjudication.



verification as discussed in the preceding para on merits of each case and pass a reasoned order after giving an opportunity of hearing to the applicant. The applicant is also directed to submit all the relevant records/documents to the original authority to recast the claims 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.

18. Revision application is disposed off in above terms.

  
20.11.18

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

ORDER No. 421/2018-CX (WZ) /ASRA/Mumbai DATED 30.11.2018.

To,

M/s PSL Tex Styles Pvt. Ltd.  
147, Mittal Estate No.6,  
Andheri Kurla Road,  
Andheri (East), Mumbai 400 59.

Copy to:

1. The Commissioner of CGST & CX, Belapur, 1<sup>st</sup> floor, CGO Complex, Balapur, Navi Mumbai- 400 614.
2. The Commissioner of CGST & CX, (Appeals), Raigad, 5<sup>th</sup> floor, CGO Complex, Balapur, Navi Mumbai- 400 614.
3. The Deputy / Assistant Commissioner (Rebate), CGST & CX, Belapur, 1<sup>st</sup> floor, CGO Complex, Balapur, Navi Mumbai- 400 614.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

