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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.195/484-486/2011-RA / S S P
F.No.195/430-432/2011-RA

Date of Issue: 07.10.2020

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ORDER NO. /2020-CX (WZ)/ASRA/MUMBAI DATED 11.03.2020 OF
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicants : 1. M/s A.C. Fabrics, Surat.
2. M/s Imitiyaz Traders, Surat

Respondents : 1 & 2 - Commissioner (Appeals), Central Excise & Customs,
Surat-I

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Orders-in-Appeal No. RKA/823-
825/STR-I/2008 and RKA/826-828/STR-I/2008 both dated
11.12.2008 passed by the Commissioner(Appeals), Central
Excise & Customs, Surat-I.

ORDER

These Revision Application are filed by M/s A.C. Fabrics and M/s Imtiyaz Traders, 1005 Chow Bazar, Behind Sopari Gali, Surat- 395 003 (hereinafter referred to as "Applicants") against the Orders-in-Appeal No. RKA/823-825/STR-I/2008 and RKA/826-828/STR-I/2008 both dated 11.12.2008 passed by the Commissioner(Appeals), Central Excise & Customs, Surat-I

2. The issue in brief is that the Applicants, both Merchant exporters of processed Man Made Fabrics(MMF) had claimed rebate claims against ARE-1s purported to be issued by M/s Parashwanath Impex, Surat as Manufacturer. The rebate claims were sanctioned to the Applicants in June 2004. During the relevant time, a special scheme was in vogue w.e.f. 01.04.2003, which permitted grant of Central Excise registration without verification. A Merchant could obtain Central Excise registration as manufacturer and get the manufacturing activity on job work basis under Rule 12B of the Central Excise Rules, 2002 which were in existence then. Subsequently, it was discovered that a very large numbers of units obtained registration without having identity or place of business and issued fake excise documents. About 500 such units were declared fake/bogus/fictitious under various alert notice issued by the Commissioner of Central Excise, after investigation and verification. M/s Parashwanath Impex, Surat was also found fictitious and declared fake/bogus/fictitious vide Alert Circular F.No. IV/12-HPIU-III/9/04-05 dated 19.05.06 issued by the Commissioner of Central Excise, Surat-I. The Applicants were then issued Show Cause Notices all dated 31.01.2008 for recovery of the amount of rebate sanctioned along with interest and penalty. The Assistant Commissioner, Central Excise, Division-IV, Surat-I vide Orders-in-Original confirmed the demand, interest, equal penalty on the Applicants and equal penalty on M/s Parashwanath Impex, Surat. Aggrieved, the Applicants then

filed appeals with the Commissioner(Appeals), Central Excise & Customs, Surat-I. However, M/s Parashwanath Impex, Surat against whom penalty had been imposed had not filed any appeal. The Commissioner(Appcals), Central Excise & Customs, Surat-I then vide Order-in-Appeal No. RKA/823-825/STR-I/2008 and RKA/826-828/STR-I/2008 both dated 11.12.2008 rejected the Applicants appeals and confirmed the Orders-in-Original so far as it related to the Applicants.

3. The Applicants then filed appeals before the CESTAT. The Hon'ble CESTAT vide Order No.A/1793-1798/WZB/AHD/2009 dated 07.08.2009 remanded the case to the original adjudicating authority. Against the CESTAT order dated 07.07.2009 and 07.08.2009, the Department then filed appeal before the High Court of Gujarat vide Tax Appeal No. 633 to 635 of 2010 mainly on the ground that the Tribunal had no jurisdiction to entertain the appeal involving erroneously taken rebate of duty in terms of Section 35B(1)(b). The Hon'ble High Court of Gujarat vide Order dated 16.03.2011 held that appeals were not maintainable before the Tribunal and all orders of the Tribunal were quashed and set aside with the observations that the Applicants can avail further remedy against the order passed by the Commissioner(Appeals) in accordance with law. In view of the Order of the Hon'ble High Court dated 16.03.2011, the Applicants filed the current Revision Applications. The details of the cases are given below:

Sl.No.	OIA No. & date	Cestat Order & No.	Departmental Tax Appeal No	High Court Order	Revision Applications filed by Applicants
	(7)	(8)	(9)	(10)	(11)
1	RKA/823-825/STR-I/2008 dt 11.12.2008 Appeal rejected	The Cestat, West Zonal Bench, Ahmedabad final Order Nos S/943-945/WZB/AHD/2009 dated 07.07.2009 remanded to the original authority	TA No. 633 of 2010 TA No. 634 of 2010 TA No. 635 of 2010	In Application No. O/10010-10015/2011, the Hon'ble High Court of Gujarat at Ahmedabad vide Order dated 16.03.2011	195/484 486/2011-RA
2	RKA/826-828/STR-	The Cestat, West Zonal Bench,	TA No. 630 of 2010		

	1/2008 dt 11.12.2008 Appeal rejected	Ahmedabad final Order Nos A/1793- 1798/2009- WZB/AHD dated 07.08.2009 remanded to the original authority	TA No. 631 of 2010	the Tribunal Order quashed and allowed the Applicants to avail further remedy against the OIAs	195/484- 486/2011-RA
			TA No. 632 of 2010		

4. The Applicants filed the current Revision Applications on the grounds that :

- During the period March 2003 to July 2004, under the textile sector scheme, the manufacturer was entitled to issue the invoices without having manufacturing facility under the Modvat scheme and the Applicants had purchased the readymade goods from the manufacturer M/s Parshwanth Impex who was registered with Central Excise vide Registration No. 370404/M/2438/2003 and on the payment of full value of the goods including duty by cheques which were transacted in the manufacturer's account and the goods were exported for which there is no dispute and therefore, it cannot be said that the rebate claim paid was fraudulent.
- The lower authorities right from the beginning were knowing that the goods received from M/s Parshvanath Impex and were covered under respective ARE-1's and Invoices and the same were exported by the Applicant as merchant export and therefore there was no suppression of facts.
- Further, there is not a single evidence or allegation in the show cause notice that the Applicants were party to fraud and therefore the demand raised beyond the period of one year is time barred.
- The original authorities have imposed and upheld penalty under Section 11AC of the Central Excise Act on the Applicants which is not sustainable in law as merchant exporters are outside the scope of Section 11AC of the Act.

- In the SCN, it was alleged that M/s Parshwanth Impex was declared as fake/bogus/non-existing firm as per Sr.No. 190 of Alert Circular dated 19.05.2006. The lower authorities have erred in not providing the document which was requested vide the Applicant's letter dated 22.07.2008. The lower authorities had not provided any corroborative evidences in the form of any inquiry, panchanama or any other documents or statement to substantiate the allegation and therefore there is violation of principle of nature justice.
- In this regard they have place reliance on case law Suryanarayan Silk Mills [2008 (232) ELT 444 (Tri. Ahmed.)].
- The rebate claim orders have not been set aside by recourse to the mandatory provisions under Section 35E(2) of the Central Excise Act, 1944. Since the rebate sanctioning orders have not been challenged in prescribed time limit by the Department, the order have become absolute as per the Supreme Court judgment in the case of Flock India Ltd. [2000 (120) ELT 285 (SC)]. In view of this, no recovery can be initiated and enforced for the rebate already sanctioned and paid under Section 11A of the Central Excise Act, 1944.
- The Applicants have not indulged in any fraud and acted on the basis of duty paid documents and the all documents were verified by the Range Officer for the purpose of sanctioning rebate claims which are not reviewed and have become absolute.
- The SCN had been issued after a period of one year from the date of detection of fraud vide Alert Circular dated 19.05.2006 or prior thereto and therefore the SCN dated 31.01.2008 is time barred. On one hand as per Alert Circular dated 19.05.2006, the manufacturer is not in existence whereas on the other hand no action had been taken under Rule 9 of the Central Excise Rules, 2002 for cancellation of the Central Excise Registration of the manufacturer which shows that the unit was in existence during the operative period of the scheme.

- Hence the Applicants prayed that the impugned Orders-in-Appeal be set aside and to remand the case by directing the adjudicating authority to provide the documents and grant cross-examination of the persons.

5. A personal hearing in the case was held on 27.11.2019 which was attended by Shri K.I.Vyas, Advocate on behalf of the Applicants.

6. 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.

7. Government notes that during the relevant time, a special scheme for Job work in Textiles and Textiles Articles was in vogue w.e.f. 01.03.2003 which permitted grant of Central Excise registration without verification. There was amendment in Central Excise Rules, 2002 wherein vide Notification No. 24/2003-CE(NT) dated 25.03.2003, Rule 12B pertaining to job work in textiles and textile articles was inserted. The said Rule 12B of the Central Excise Rules, 2002 was then omitted vide Notification No. 11/2004-CE(NT) dated 09.07.2004. Government finds that the Rule 12B for Special scheme for Job work in Textiles and Textiles Articles was in operation only for the period 01.04.2003 to 09.07.2004.

8. On perusal of the records, it is observed that the Applicants i.e. M/s A.C. Fabrics and M/s Imtiyaz Traders both Merchant exporters had procured processed Man Made Fabrics from same manufacturer M/s Parshwanath Impex, Surat and exported the same goods. The Applicants then, claimed rebate of Rs. 8,39,868/- (Rupees Eighty Lakhs Thirty Nine Thousand Eight Hundred and Sixty Eight Only) and Rs. 8,39,868/- (Rupees Eighty Lakhs Thirty Nine Thousand Eight Hundred and Sixty Eight Only) respectively and all the said rebate claims were sanctioned by the department on 14.06.2004.

9. The Government finds that the Commissioner(Appeals) has sufficiently and conclusively addressed the issues raised by the Applicants such as principles of natural justice, non-existence of purported manufacture, whether rebate claimed fraudulently or otherwise, the aspect of limitation etc. Hence the Government observes that these findings are sound and legal and do not find any reason to divulge further on these issues.

10. In the wake of Alert notice dated 19.05.2006 issued by the Surat-1 Commissionerate, that name of the manufacturer M/s Parshwanath Impex, Surat was figuring in case of fraudulent availment of Cenvat credit on the basis of invoices' issued by bogus/ non-existent grey manufacturers, the Applicants and the manufacturer were issued show cause notices for the recovery of the fraudulently availed rebate. The Applicants have not made any efforts and nor adduced any documentary evidence as to disprove that the suppliers/manufacturers, who are the authors of ARE-1 and Export invoice are in existence and not fictitious and bogus. The Applicants failure to prove the existence of the manufacture confirms beyond doubt that transaction are not transparent and devoid of fraud.

11. In *Sheela Dyeing & Printing Mills (P) Ltd.* [2007 (219) E.L.T. 348 (Tri.-Mum.)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgment has been upheld by the Hon'ble High Court of Gujarat. In a judgment in the case of *Chintan Processor* [2008 (232) E.L.T. 663 (Tri.-Ahm.)], the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as follows:

"Once the supplier is proved nonexistent, 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."

12. In a similar case of M/s. Multiple exports Pvt. Ltd., Government vide GOI order No 668-686/11-Cx dt. 01-06-2011 has upheld the rejection of rebate claim by lower authorities. Division Bench of Hon'ble High Court of Gujarat, vide its order dated 11-10-2012 in SCA No 98/12 with SCA No

101/12 [reported in 2013 (288) E.L.T. 331 (Guj.)], filed by party has upheld the above said GOI Revision order dated 01-06-2011. Government also observes that the contention of the respondent that they had exported the goods on payment of duty and therefore, they are entitled to rebate of Excise duty. The same arguments came to be considered by the Division Bench of Hon'ble High Court of Gujarat in Special Civil Application No. 13931/2011 in Diwan Brothers Vs Union of India[2013 (295) E.L.T. 387 (Guj.)] and while not accepting the said submission and while denying the rebate claim on actually exported goods, the Division Bench has observed as under :

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

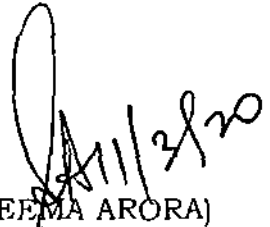
13. Government also relies on the judgments of Mumbai High Court in case of Commissioner of Central Excise, Mumbai-I Vs M/s Rainbow Silks & Anr reported at 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court, Mumbai, in similar circumstances i.e., when a processor is a party to a fraud, wherein Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and utilized for payment of duty on goods exported, it was held that "since there was no accumulation of cenvat credit validly in law, there was no question of duty being paid there from" and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments. Further, in the case of Omkar Overseas Ltd. [2003(156) ELT 167(SC)] Hon'ble Supreme Court has held in unambiguous terms that rebate should be denied in cases of fraud.

14. The Applicants submission before this forum are mere reiteration of submission made before the Commissioner(Appeals) and are found to be bereft of any material evidences.

15. Hence, Government finds no infirmity in the impugned Orders-in-Appeal and upholds the same.

16. The six Revision Applications filed by the Applicants are dismissed being devoid of merit.

17. So, ordered.



(SEEMA ARORA)

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

436-441

ORDER No. /2020-CX (WZ)/ASRA/Mumbai DATED 11.03.2020.

To,
M/s A.C. Fabrics,
M/s Intiyaz Traders,
1005 Chow Bazar,
Behind Sopari Gali,
Surat- 395 003

Copy to:

1. The Commissioner of GST & Central Excise, Surat Commissionerte,
New Central Excise Building, Chowk bazaar, Surat - 395 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.