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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.195/736/2012-RA / 5467

Date of Issue: 13.03.2020

ORDER NO. H42/2020-CX (WZ)/ASRA/MUMBAI DATED 16.03.2020 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.

Applicant : M/s Sheetal Exports.

Respondent : - Commissioner (Appeals), Central Excise, Mumbai-I

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. YDB(37)M.I/2012 dated 30.04.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-I.



## ORDER

This Revision Application is filed by M/s Sheetal Exports, Turning Point Complex, Ghod Dod Road, Surat - 395 001(hereinafter referred to as "Applicant") against the Order-in-Appeal No. YDB(37)M.1/2012 dated 30.04.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-I.

2. The issue in brief is that the Applicant, Merchant exporter of processed Man Made Fabrics(MMF) had filed rebate claims in respect of duty paid on the goods manufactured by M/s Radha Dying & Printing, Mills, Mumbai (herein after as Radha Dyg) having registration No. AAFR4777MXM001 falling under the jurisdiction of Range-II, Div-Bhandup, M-III Commissionerate. The goods had been exported through Mumbai Port under four ARE-1 Nos. 137 to 140 all dated 19.10.2004 and file rebate claim totaling to Rs. 13,57,200/-.

- (i) On scrutiny it was that the Applicant had submitted duty payment certificates in loose/open instead they were supposed to submit the same in a sealed cover. Therefore, doubt regarding genuineness of the duty payment certificate was raised. Hence they were issued Show Cause Notice dated 05.05.2005 wherein they were asked to submit a copy of the acknowledgement of prior intimation taken from jurisdictional Supdt/AC/DC with respect to clearance of goods in question from factory under self-sealing and self-certification and a Certificate issued by the jurisdictional Supdt verifying the genuineness of duty paying certificate.
- (ii) The jurisdictional Supdt vide his letter dated 24.10.2005 informed that the manufacturer Radha Dyg had availed fraudulent credit on the basis of documents issued by various bogus firms. The Applicant did not appear for the personal



hearing nor did they submit any written submission to the SCN. On the basis of available records, the Assistant Commissioner(Rebate), Central Excise, Mumbai-I vide Order-in-Original No. 124/R/2006 dated 27.02.2006 rejected the rebate claims.

- (iv) Aggrieved the Applicant then filed appeal with the Commissioner(Appeals), Central Excise, Mumbai-I. Commissioner(Appeals), vide Order-in-Appeal No. CPA(3166)135/MI/2006 dated 20.09.2006 remanded the case back to the lower authority for following principles of natural justice and allowing an opportunity.
- (v) The Applicant then filed a revision application. The Revisionary Authority vide GOI No. 191/09 dated 10.07.2009 as set aside the Order-in-Appeal and Order-in-Original and allowed the application by remanding the case to the original adjudicating authority to sanction the rebate claim.
- (vi) The Applicant filed a Writ Petition No. 2114/10 before the Hon'ble Bombay High Court. The Hon'ble High Court directed the Department to implement the GOI Order dated 10.07.2009 within one week from date i.e.17.03.2010. Accordingly the Assistant Commisisoner(Rebate) sanctioned the rebate claim of Rs. 13,57,200/- vide Order-in-Original No. 15/R/2010 dated 22.03.2010.
- (vii) Aggrieved with the GOI dated 10.07.2009, the Department also filed Writ Petition No. 3959/2010 before the Hon'ble Bombay High Court. The Hon'ble High Court vide Order No. dated 28.06.2011 set aside the GOI dated 10.07.2009 and sent back the case to the original authority for denovo consideration and directed the adjudicating authority to decide the rebate application expeditiously and within a period of three months.





- (viii) The Applicant was given three personal hearing, however, nobody appeared. The Assistant Commissioner(Rebate), Central Excise, Mumbai-I vide Order-in-Original No. 163/R/2011 dated 18.10.2011 rejected the rebate claims amounting to Rs. 13,57,200/- under Rule 18 of Central Excise Rules 2002, read with Section 11B of Central Excise Act, 1944
- (ix) Aggrieved, the Applicant then filed appeal with the Commissioner(Appeals), Central Excise, Mumbai-I. Commissioner(Appeals), vide Order-in-Appeal No. YDB(37)M.I/2012 dated 30.04.2012 upheld the Order-In-Original dated 18.10.2011 and rejected the Applicant's appeal.

3. Aggrieved, the Applicant filed the current Revision Application on the grounds

- (a) The High Court had passed the order dated 08.07.2011 to decide the case within three months and therefore the adjudicating authority was required to act immediately to meet with the principles of natural justice. However, the adjudicating authority intentionally disregarded such direction and only in the last minutes issued a letter fixing hearing on 04.10.2011 i.e. before the ending of the three months and therefore the appellant had made request to grant time or one month. However, the adjudicating authority declined and decided the SCN under the guise that there was direction from the High Court to decide the case within three months. Thus, the negligence causer by the adjudicating authority for granting sufficient time is in violation of principles of natural justice and therefore the order of the Commissioner (Appeals) is not correct and legal.
- (b) It was open for the adjudicating authority to ask for extension of time from the High Court when the hearing was fixed nearly to



completion of three months and the appellant was not in a position to make submissions promptly in a short duration. In view of this also, the order of the lower authorities are not correct and required to set aside in the interest of justice.

- (c) Though the Commissioner(Appeals) in earlier proceedings while remanding the case to the original adjudicating authority, the direction was given to provide the copy of the letter issued by the Superintendent, Central Excise vide letter F. No. V(15)Reb-DP/2005 dated 24.10.2005, the lower authorities decided the case hastily without providing the copy of the said letter which is in gross violation of principles of natural justice.
- (d) The lower authorities have failed to appreciate the point of law that the Applicant is a merchant exporter and had purchased duty paid goods from Radha Dyeing which are exported and the genuineness of the export of the said goods is beyond doubt proved and therefore the rebate cannot be denied as is considered by Gujarat High Court in case of Central Excise & Customs Vs D.P.Singh [2011 (270) ELT 321 (Guj)]. Against this order of the High Court Revenue went in appeal vide no SLP(Civil) CC 19577/2011 which have been decided on 02.12.2011 rejecting/dismissing the appeal of the revenue. Thus, the issue is finally settled and the rebate claims cannot be rejected.
- (e) The finding of the lower authorities on the basis of the letter of the Range Superintendent, In-charge of M/s. Radha Dyeing and Printing Mills vide his letter F. No. V(15)Reb-DP/2005 dated 24.10.2005 reported that the manufacturer Radha Dyg had availed fraudulent credit on the basis of documents issued by various bogus firms. Hence the goods cannot be considered as cleared against payment of duty. The appellant submits that on the basis of the above findings, the goods cleared for export



under the invoices of Radha Dyg cannot be denied as there is no law for denial of rebate claims. However, the law permits to take action against Radha Dyg for recovery of wrongly availed credit if any. No action can be taken against merchant exporter who have purchased the goods and exported. In view of this, the rejection of rebate claims on the basis of the above findings is not correct in law and therefore also the said orders are required to set aside allowing the appeal with consequential relief.

- (f) In the original round of appellate proceedings, the Revisionary Authority had allowed the appeal with consequential relief after giving detail findings on the submissions made and documents produced and the same documents are still good and the same findings are still good in the eyes of law as the view taken in Shree Shaym International have been upheld by the Gujarat High Court for the merchant exporter and also Supreme Court. Thus, on the basis of earlier findings, the present appeal is required to be allowed with consequential relief.
- (g) The other findings given by the lower authorities in their orders are not sustainable in law which is against fundamental provisions of the Central Excise Act, 1944 and rules framed there under as regards to export of the goods by merchant exporter.
- (h) The Applicant prayed that the orders passed by the lower authorities be set aside with consequential relief.

4. 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 Applicant. The Applicant reiterated the grounds made in their revision application and submitted written submission. The Applicant submitted that case had been filed against Radha Dyg and also submitted the Duty Payment Certificate





and details of payment made to Radha Dyg. They relied in the case of Rainbow Silks [2011 (274) ELT 510 (Bom.)].

5. 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.

6. On perusal it is observed that the based on the Departmental Writ Petition No. 3959/2010 the Hon'ble High Court vide Order No. dated 28.06.2011 had set aside the GOI dated 10.07.2009 and sent back the case to the original authority for denovo consideration and directed the adjudicating authority to decide the rebate application within a period of three months. The adjudicating authority vide Order-in-Original No. 163/R/2011 dated 18.10.2011 rejected the rebate claims on the following grounds:

*"13. I have carefully gone through the case. I find that the claimant had faxed letter on 04.10.2011 wherein they requested to adjourn the case by one month. The High Court had directed to decide the case in three months. Therefore, the case was not adjourned beyond the time limit. However, three opportunities to appear in person were granted to the claimant within this three month's period.*

*14. It is seen that the jurisdictional Range Superintendent vide his letter F.No. V(15)Reb-DP/2005 dated 24.10.2005 had informed that the manufacturer M/s Radha Dying & Printing, Mills, had availed fraudulent credit on the basis of documents issued by various bogus firms. Hence the goods can not be considered as cleared against payment of duty.*

*15. Payment of duty is a mandatory condition for claiming rebate. In view of the jurisdictional range officer's letter mentioned above, I hold that duty has not been discharged against the clearance of said goods."*

And last Paras of Order-in-Appeal No. YDB(37)M.1/2012 dated 30.04.2012

*"From the above, it is cleared that, the payment of duty is a mandatory condition for sanction the rebate claim to ensure the duty paid character of the goods. The Range Superintendent in charge of M/s Radha Dying and Printing Mills, vide his letter F.No. V(15)Reb-DP/2005 dated 21.10.2005, reported that*



the said unit had availed credit on the basis of documents issued by various bogus firms and hence goods cleared by them, using the said credit can not be considered, as goods cleared against the payment of duty.

In view of the above, I uphold the impugned order and reject the appeal\*

7. Government finds that Applicant had submitted Duty Payment Certificate and the same was issued on 09.12.2004. The jurisdictional Supdt, Range-02, Bhandup Division, Mumbai-III in-charge of Radha Dgy vide F.No. C.Ex.R-02/DPC/Radha/04 dated 09.12.2004 had certified as follows: -

#### DUTY PAYMENT CERTIFICATE

This is to certify that M/s Radha Dyeing & Printing Mills, 149/2, Gemdevi Road, Bhandup, Mumbai-400 078 having Registration No. AAAFR4777MXM001 has paid the Central Excise duty on clearance vide following invoice to M/s Sheetal Export, 411, Turing Point Complex, Ghod Doss Road, Surat falling under Chapter-54. The details of duty payment are as under :-

Invoice No. & Date	ARE-1 No. & Date	Cenvat Credit Account (CR23A Part-II) Entry No. & date	Total duty through Cenvat Credit Account	Remarks
682 dt 19.10.04	137/04-05 dt 19.10.04	E.No.2049/31.10.04 & 2281/08.11.04	3,39,300/-	Consolidated entry made in Cenvat Credit Account.
683 dt 19.10.04	138/04-05 dt 19.10.04	E.No.2049/31.10.04 & 2281/08.11.04	3,39,300/-	
684 dt 19.10.04	139/04-05 dt 19.10.04	E.No.2049/31.10.04 & 2281/08.11.04	3,39,300/-	
685 dt 19.10.04	140/04-05 dt 19.10.04	E.No.2049/31.10.04 & 2281/08.11.04	3,39,300/-	





8. The Government notes that the Commissioner(Appeals) in the findings in Order-in-Appeal No. CPA(3166)135/MI/2006 dated 20.09.2006 -

*"In the present case the manufacturer M/s Radha Dyeing & Printing Mills received raw materials/inputs from some of their clients. These units either did not exist or issued bogus cenvat documents. If the cenvatable documents are from non-existent firms issuing cenvatable documents then there cannot be credit accumulation in the RG23A account or RG23C account. Despite this if somebody claims that proper duty has been paid on the export goods in which these inputs/ raw materials covered by such bogus documents. The reply to such claim should be in the negative. It is because no credit balance in the RE23A account was there to discharge duty on the finished goods in which duty paid raw materials/ inputs were used. Much less there was any reason to relieve that the exported goods were such goods on such goods on which proper excise duty was paid.*

*Only 4 ARE-1s were involved. These ARE-1s have been mentioned in the impugned order-in-Original on the facts side of the order together with relevant Shipping Bills and Bills of Lading numbers. But it is also on record that appellants have neither submitted their reply nor appeared for personal hearing. Simple non-appearance of the appellant does not establish the fact that they did not have anything to say. Similarly, non submission of reply does not indicate admission of guilt on the part of the appellant. The amount involved is also not small. It would not be fair to reject their claims for above reasons. Appellant may have received duty paid inputs/raw materials also from genuine suppliers/customers as all companies/firms supplying duty paid inputs cannot be bogus units. There may be some accumulated balance in RG23A due to such bonafide business transactions. Appellants should produce the evidence before the lower authority. No evidence has been produced before the undersigned as to how much duty was paid by the appellants from PLA.*

#### ORDER

*Having regard to above facts and circumstances the matter is remanded back to the lower authority for following principles of natural justice and allowing an opportunity."*



9. The Government notes that the Applicant as per records was never declared or proved to be fake/bogus unit and there is nothing on record to show that there was any further investigation/issuance of show cause notices and Orders-in-Original in this case against the Applicant by any Central Excise Commissionerate. In the present case, the impugned Order-in-Appeal has merely proceeded on presumption that, the Applicant may be a party to the fraudulent availment of credit, without any evidence to that effect, nor do records indicate anything to the effect that any show cause notice was issued to the Applicant alleging bogus purchase or wrong availment of credit. The Hon'ble High Court in its Order dated 28.06.2011 in Para 9 had made observation for show cause notice issued to Radha Dyg and had observed that -

*"Since, the notice to show cause is pending for adjudication we must clarify that we have not made any observations on the merits of the allegation."*

Thus, the entire proceedings of adjudication is to be taken into consideration in light of the adjudication proceedings against Radha Dyg against whom the cause notice for recovery of wrongly availed Cenvat credit is going on. The Applicant have submitted the Duty Payment Certificate dated 09.12.2004 issued by the jurisdictional Supdt and details of cheque payments made to Radha Dyg by them. Further, the Range Supdt vide letter dated 24.10.2005 had informed that the manufacturer Radha Dyg had availed fraudulent credit on the basis of document issued by various bogus firms. Government is in agreement of the findings made by the Commissioner(Appeals) in Order-in-Appeal CPA(3166)135/MI/2006 dated 20.09.2006. Hence denial of rebate based on presumptions and assumptions is not legally sustainable. Government therefore, is of considered opinion that the Order-in-Appeal No. YDB(37)M.I/2012 dated 30.04.2012 passed by the Commissioner(Appeals), Central Excise, Mumbai-I lacks appreciation of evidence and needs to be set aside.



10. Government observes that the benefit of rebate claim cannot be denied on the basis of conjecture. GOI vide its Order No. 501/2009-CX, dated 29-12-2009, in F. No. 195/88/2007-RA-CX, in the case of M/s Vikram International observed that

*\*.....there is no doubt that the goods have not been exported out of India in terms of Rule 18 of Central Excise Rules, 2002 read with procedure prescribed under Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 and under certification of Customs authorities at the port of export. There is no observation to the contrary either in the order of rebate sanctioning authority or order of Commissioner (Appeals). It is also observed that goods were supplied to the applicant under cover of duty paying Central Excise documents and in the invoices issued the duty amount paid by manufacturer has been mentioned and for the goods supplied the applicant has made payment of total amount inclusive of Central Excise Duty. This position is not disputed. The only statutory requirement of duty paid character by way of certification by Supdt. Central Excise in triplicate copy of ARE-1 in terms of Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 read with paras 8.3 and 8.4 of Central Excise Manual is also not in dispute. In the order-in-original and order-in-appeal, there is no charge or allegation that the transaction between exporter/applicant and the manufacturer/supplier was not at arms length or not in the nature of a transaction in the normal course of business or non-bona fide and influenced by any extra commercial consideration. In fact there is nothing on record to establish, much less point out even prima facie any role direct or indirect, connivance or intention of the applicant in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices.....*

*The applicant/exporter who has bonafidely purchased and exported the goods after payment of entire amount inclusive of duty per se cannot be also penalized by way of denying his claim for rebate if otherwise it is in order, especially when no evidence has been laid to show any mutuality of interest financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods.....\**





A similar view has also been taken by GOI in its Order No. 351/2010-CX, dated 26.02.2010 in F. No. 195/130/2007-RA-CX in respect of M/s Sheetal Exports.

11. In view of the above, Government set asides the impugned Order-in-Appeal No. YDB(37)M.I/2012 dated 30.04.2012 and since the Order-in-Original dated 18.10.2011 was exparte remands back the matter to the lower authority for following principles of natural justice and allowing an opportunity back to decide the same afresh, after due verification of documents and pass the order expeditiously.

12. The Revision Application is disposed off in terms of above.

13. So, ordered

(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. ~~442~~/2020-CX (WZ)/ASRA/Mumbai DATED 16.03.2020.

To,  
M/s Sheetal Exports,  
Turning Point Complex,  
Ghod Dod Road,  
Surat - 395 001

Copy to:

1. Commissioner(Appeals), Central Excise, Mumbai-I.
2. The Commissioner of GST & Central Excise, 13 & 15<sup>th</sup> Floor, Air India Bldg, Nariman Point, Mumbai 400 021.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

**ATTESTED**

**B. LOKANATHA REDDY**  
Deputy Commissioner (R.A.)

