

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
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F.No. 198/244/12-RA & / 5021
195/1272/12-RA

Date of Issue: 01.09.2020

ORDER NO. ¹⁵²⁻¹⁵³ /2020/CX(WZ)/ASRA/MUMBAI DATED 19.03.2020, 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 CENTRAL EXCISE
ACT, 1944.

Subject : Revision Applications filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.
US/439/RGD/2012 dated 11.07.2012 passed by the
Commissioner, Central Excise (Appeals II), Mumbai.

File No.	Applicant	Respondent
198/244/12-RA	Commissioner, Central Excise, Raigad	M/s Krishna Exports, Surat.
195/1272/12-RA	M/s Krishna Exports, Surat.	Commissioner, Central Excise, Raigad



ORDER

The Revision Application bearing No. 198/244/12-RA is filed by Deputy Commissioner, Central Excise Rebate, Raigad against Order-in-Appeal No. US/439/RGD/2012 dated 11.07.2012 passed by the Commissioner, Central Excise (Appeals II), Mumbai. In a similar issue and against the same Order in Appeal No. . US/439/RGD/2012 dated 11.07.2012 passed by the Commissioner, Central Excise (Appeals II), Mumbai M/s Krishna Exports, Surat have filed a Revision Application No. 195/1272/12-RA.

2. The brief facts of the case is that M/s Krishna Exports, Surat, had filed 20 rebate claims for rebate of duty amounting to Rs. 54,38,629/- (Rupees Fifty Four Lakh Thirty Eight Thousand Six Hundred Twenty Nine only) with the Deputy Commissioner, Central Excise Rebate, Raigad under 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-CE (NT) dated 06.09.2004 in respect of goods exported. The Deputy Commissioner, Central Excise Rebate, Raigad vide Order in original No.1902/2011-12/DC (Rebate)/ Raigad dated 27.01.2012 rejected the said rebate claims.

3. Being aggrieved, M/s Krishna Exports, Surat filed the appeal before the Commissioner, Central Excise (Appeals-II), Mumbai against the said Order in Original No. 1902/2011-12/DC (Rebate)/ Raigad dated 27.01.2012 challenging the rejection of 20 rebate claims collectively amounting to Rs.54.38,629/-.

4. The Commissioner, Central Excise, (Appeals-II), Mumbai vide his Order-in-Appeal No. US/439/RGD/2012 dated 11.07.2012 partially allowed the appeal filed by the M/s Krishna Exports , Surat by upholding the rejection of 8 rebate claims collectively for Rs.25,58,296/- and by setting aside the rejection of the remaining 12 rebate claims collectively for Rs.28,80,396/- with consequential relief.

5. Being aggrieved by the impugned Order-in-Appeal to the extent it set aside the rejection of 12 rebate claims, the Deputy Commissioner, Central Excise Rebate, Raigad filed Revision Application (F. No.198/244/12-RA) on the following grounds:-

5.1 The Commissioner (Appeals) has failed to appreciate the facts in as much as during the material time DGCEI, Vadodara & Surat Commissionerate had detected several cases of non-existent / bogus firms who were purportedly either supplying fabrics or processing grey fabrics. That such firms applied for got Central Excise registration without having any facility for manufacture, sometimes



even with imaginary address. Such firms started issuing bogus / fake Cenvatable invoice with the sole intention of passing fraudulent / bogus Cenvat credit. During the course of DGCEI investigation it was further revealed that these non-existent / bogus grey fabrics suppliers had merely supplied duty paying documents, i.e. Cenvatable invoices, on a commission basis without supplying any grey fabrics to the grey processors with the intention to pass on fraudulent / bogus 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 fabrics suppliers & utilized the said bogus credit for payment of central excise duty on exports goods.

- 5.2 As a consequence of the fraud detailed above, Alert Lists were issued by several investigative agencies such as DGCEI and local CX & Customs Preventive formations. The merchant exporter himself, i.e., M/s Krishna Exports is appearing in four Alert Lists issued by CIU, JNCH, Nhava Sheva, Central Excise, Thane - I Commissionerate, Commissioner of Central Excise, Thane II Commissionerate. Moreover, the processor, M/s Radha Dyeing & Printing Mills are appearing in the Alert List issued by Central Excise, Mumbai III Commissionerate. M/s Swastik Polyprints Pvt Ltd is appearing in two Alert Lists, one issued by the Surat - I Commissionerate & the second issued by the Assistant Director, DGCEI, Vadodara. In the instant case, the export goods have been procured by the M/s Krishna Exports from the aforesaid processors. In view of the above, the Commissioner (Appeals) should have rejected all the 20 rebate claims amounting to Rs. 54,38,629/- on this ground alone.
- 5.3 The Commissioner (Appeals) has erred in allowing the 12 rebate claims amounting to Rs.28,80,396/-, with consequential relief contrary to the facts of the case. Moreover, to verify the authenticity of the Cenvat credit availed by the processors, on the strength of Invoices so received from grey fabrics suppliers and the subsequent utilization of such Cenvat credit for payment of central excise duty on the above mentioned exports made by the merchant exporters, an opportunity was given to claimant merchant exporters for submission of document / records regarding the genuineness of the availment of Cenvat credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-I. In spite of this, the claimant did not submit any such documents proving the genuineness of the Cenvat credit availed & subsequently utilized by processors for payment of duty on the above exports. It is thus concluded that the duty paid by the processors out of the Cenvat credit accumulated is not free from the doubt. Therefore, the rebate claims filed by the claimant (merchant exporter).



of duty paid on the above export goods should have been rejected by the Commissioner (appeals).

- 5.4 In respect of the rebate claims from 17504 to 17509 and 21367. 21369 to 21371, the certificate given on reverse side of the ARE-1 in Part A, by the Central Excise office shows that the goods were cleared for export under "duty payable". This means that the goods exported have not suffered the duty payment at that time of clearance from the factory. Till date the claimant has not produced the proof of payment of duty on exported goods which is mandatory for claiming rebate of duty under Rule 18 of Central excise Rules, 2002 for the simple reason if duty is not paid then rebate is not applicable. Rebate of duty is reimbursement of duty which was earlier paid. If duty is not paid, then there is no question of reimbursement of such duty under rule 18 of Central Excise Rules, 2002. In spite of giving opportunities, the proof of payment of duty on exported goods by the manufacturer of the excisable goods was not established as the duty payment certificates were not produced by the claimant. In view of the above Commissioner (Appeals) should have rejected the rebate claims from 17504 to 17509 and 21367, 21369 to 21371.
- 5.5 In respect of the rebate claims from 4187 & 4188, the certificate given on reverse side of the ARE-1 in Part A, by the Central Excise office shows that the goods were cleared for export under duty payable. This means that the goods exported have not suffered the duty payment at that time of clearance from the factory. During the course of personal hearing, the claimant submitted the duty payment certificate in the format of "To whomsoever it may concern". On scrutiny of the said documents, it was noticed that the same were issued without the office seal and therefore the genuineness of the same is in doubt. In view of the above. the Commissioner (Appeals) should have rejected the rebate claims from 4187 to 4188.
- 5.6 The GOI vide Order No. 1034/11-CX dated 12.08.2011 passed in case of M/s Zandu Chemicals Ltd. held that-

"Non-submission of statutory document of ARE-1 and not following the basic procedure of export goods as discussed above cannot be treated as just a minor/technical procedural lapse for the purpose of granting rebate of duty".

Similar stand has been taken by the Joint Secretary the Government of India vide order Nos. 246/11-CX dated 17.03.2011; 216/11-CX dated 07.03.2011; 835/11-CX dated 17.03.2011 and 736/11-CX dated 13.06.2011.

In the case of M/s Sam Alloys P. Ltd. the Commissioner (Appeal-II), Central Excise. vide OIA No. US/350/RGD/2011 dated 18.10.2011



rejected the appeal filed by M/s Sam Alloys Pvt. Ltd. on the similar issue.

6. In their reply to Show cause Notice issued under Section 35EE of the Central Excise Act, 1944 M/s Krishna Exports vide its cross objections submitted as under:-

6.1 The Commissioner (Appeals) have examined well the factual aspects and evidences produced and thereafter the order have been passed and therefore ground is not sustainable. Further, the entire ground is based on the point that the processor availed the Cenvat Credit on the bogus/ fake invoices issued by nonexistent grey fabrics supplier and utilized the said bogus credit for payment of Central Excise duty on exports goods. In this connection, no action against the merchant exporter can be taken and every action for wrong availment of credit if any, is open for the revenue to take action against the concerned processors and not the merchant exporter. This issue has been settled by the Revision Authority as well as High Court and Supreme Court.

6.2 The Commissioner (Appeals) has given detail finding on each and every rebate claims and therefore the averment made by the applicant is not applicable at all. Further, several evidences in support of the claim that duty paid goods have been exported and the verification of duty payment is not responsibility of the respondent but it is the responsibility of the concerned range superintendent/excise officers to verify and report as regards to payment of duty after verifying the monthly returns filed by the concerned processors. M/s Krishna Export is not under Alert List for the goods exported and purchased from M/s. Radha Dyeing and Printing Mills and M/s. Swastik Polyprints Pvt. Ltd. The respondent have purchased the goods on payment of duty as merchant exporter which is not in dispute and all the evidences to this effect were produced before the lower authorities.

6.3 It is established law that in the case of merchant exporter who have purchased the processed fabrics is not required to verify what the processors have done at their end and even Commissioner (Appeals) is also not required to verify said facts as for any violation of the Cenvat Credit law, the processor alone is responsible and therefore the finding of the Commissioner (Appeals) while allowing 12 rebate claims amounting to Rs. 28,80,396/-is absolutely correct, proper and legal.

6.4 In of rebate claims from 17504 to 17509 and 21367, 21369 to 21371, the certificate given in reverse side of ARE-1 on the Part A by the Central Excise Office shows that the goods were cleared for export under duty payable. This means the goods exported have not suffered duty payment at the time of clearance from the factory. It is the duty of the rebate sanctioning authority to obtain duty payment certificates



from the concerned range superintendent once the goods under respective ARE-1 have been exported. It is fundamental principle of law under Central Excise that the manufacturer is required to file monthly returns on the 10th of every month showing the payment of duty made for the goods cleared under the respective invoices during the month. Thus, the processors have paid duty on the invoices shown on ARE-I which is undisputed fact. However, the rebate sanctioning authority has not bothered to get the records of the processors for the respective month including monthly returns or separate duty payment certificates from the respective Range Superintendent. The negligence caused on the part of revenue for sanctioning rebate claims cannot result into nonpayment of duty on the goods exported. Thus, the bare allegations as regards to duty payable is not sustainable as the duty is already paid by the respective processor in the respective month which can be easily verified by the rebate sanctioning authority. However, the rebate sanctioning authority remained inactive for a period of about more than 5 years for getting the records from Range Superintendent and on the contrary blamed the exporter which is not sustainable in law. Since, the revenue failed in performing their duty as regards to the duty paid on the goods exported, the respondent have filed RTI application for obtaining the monthly returns filed by the respective processors to establish that the duty have been paid on the invoices and goods received from the respective processors which have been exported under respective ARE-1s as claimed by the revenue itself.

6.5 As regards rebate claims 4187 & 4188, the duty have been paid by the processors and therefore the genuineness of the same cannot be challenged under guise that the said certificate have been issued without office seal. The point that whether the processors have suffered duty on the invoices and goods issued to the exporter or not is to be verified from the respective monthly returns and office seal or otherwise have no scope to play. The only point in to be verified is duty paid nature of the good.

6.6 When the rebate sanctioning authority fails to consider the vital facts and evidences produced for sanctioning rebate claims in terms of Para 8.4 of Chapter 8 of CBEC's Instructions then the power lies with the higher authority in the form of appeal which is Commissioner (Appeals) who have considered the evidences in terms of para 8.4 and after satisfying himself, the appeal filed by the respondent was allowed partly. Thus averments made that only rebate sanctioning authority have power in terms of pare 8.4 is misconception and misinterpretation of law.

In respect of R.C. No. 30992 to 30998 triplicate copy of ARE.1 duly signed by jurisdictional Central Excise Officer was not submitted along with claims. This was explained well in reply to deficiency memo



as is produced in para 16 of the adjudication order no. 1902/11.12 dated 27.01.2012 to the effect that — "As per para 6.3 of Chapter 8 of CBECs Manual, disposal of triplicate copy was prescribed according to which it was to be sent to the rebate sanctioning authority either by post or handing over to the exporter in a tamper proof sealed cover, since, the exporter had not opted to receive the same from the Range Superintendent, the same was required to be called from the Range Office of the processor." Thus there was not mandatory requirement on the part of exporter to produce triplicate copy of ARE-1. In view of this, the finding of the adjudicating authority as well Commissioner (Appeals) for rejection of 7 rebate claims without calling for the documents or without verifying whether the said Range Officer(s) had performed their duty in terms of para 6.3 of Chapter 8 of CBEC's Manual and without giving any finding on the submissions made by the respondent before the lower authorities have no right to claim that the respondent had not produced the triplicate copy of ARE-1 when there is no mandatory provision for production of the said document by the claimant. In view of this, the judgment cited in the case of Zandu Chemicals Ltd. vide order no. 1034/2011.CX dated 12.08.2011 as well as Order No. 246/11.CX dated 17.03.2011, 216/2011.CX dated 07.03.2011, 835/11-CX dated 17.03.2011 & 76/11.CX dated 13.06.2011 are not applicable to the case of the respondent. Since, the rebate sanctioning authority as well as Commissioner (Appeals) have not taken pain for verification of the said documents and the mode of the forwarding of the said documents to rebate sanctioning authority, the respondent have made efforts by filing RTI application to the concerned authorities and the outcome of the same will be produced to the Revision Authority at the time of hearing of the appeals filed by the revenue as well as them.

- 6.8 Non-submission of triplicate copy of ARE-1 which is the responsibility of the Range Superintendent, the judgment cited of Commissioner (Appeals) in OIA No. US/350/RGD/2011 dated 18.10.2011 is not applicable as it is not the responsibility of the exporter to produce triplicate copy of ARE-1s which is the responsibility of Range Superintendent having jurisdiction over the assessee unit. Thus, no rebate claims can be rejected on the ground that triplicate copy of ARE-1 is not submitted when the original and duplicate copy of ARE-1 have been submitted showing the proof of export of the goods duly endorsed by the Customs Authority. The responsibility of the rebate sanctioning authority and Range Superintendent cannot be escaped by giving simple findings against the exporter without calling for the documents and without verifying whether the concerned Range Superintendent have performed his duty in terms of para 6.3 of Chapter 8 or not? In view of this, the revision application filed by the revenue is required to be dismissed/rejected in the interest of justice



and the revision application filed by the respondent is required to be allowed with consequential relief.

7. Against impugned Order-in-Appeal No. US/439/RGD/2012 dated 11.07.2012 to the extent it upheld the rejection of 8 rebate claims collectively for Rs.25,58,296/-,M/s Krishna Exports filed Revision Application (F. No.195/1270/12-RA) on the following grounds:-

7.1 They submitted documents of each set for all 8 exports and they have received Foreign Exchange against all these exports which is established as per Bank realization Certificate received and furnished in this matter.

7.2 The documents furnished clearly establish proof of exports. In all 8 cases exports made by them are clearly established from the copies of ARE-1, Shipping Bills being issued by the competent Excise Authority, export invoice, Bill of Lading Bank realization Certificates and each shipment. They are merchant exporter and received the goods on payment of proper Central Excise duty. The deficiency Memo issued on technical grounds after a period of six years is not permissible in law as the general law of limitation is one year in view of Apex Court Judgment 1969(2)SCC 187.

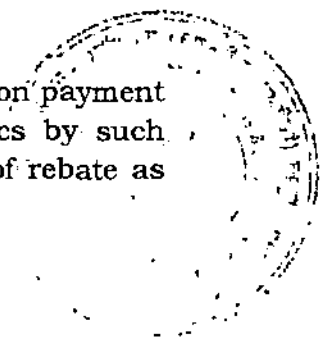
Even where credit is not taken on grey fabrics, the processor can clear the goods on payment of duty. There is exclusive provision that no credit can be taken on grey stage invoices when the goods were cleared under Notification No. 30/2004-CE dated 09.07.2004 which has not been appreciated by the appellate authority.

7.3 There are various judgments by the Supreme Court, High Courts where rebate has been granted when it is established that export in the matter has taken place, the substantive right of the Applicant has accrued and the same is to be sanctioned accordingly.

7.4 They rely on Supreme Court judgment 2003 (156) ELT 167 (SC) in Omkar Overseas Ltd. Vs UOI. wherein it is held that Export rebate is not to be denied because there was short payment; that benefit can be denied only if there is short payment by reason of fraud.

7.5 As regards input stage verification and evidences etc. as raised by the department, it is not the responsibility of the Exporter once the duty payment certificate have been received by the concerned Supdt. of Central Excise after verifying all the procedure of law and therefore no separate evidences are required to be produced.

They got the goods processed from the processing house on payment of usual charges. The payment of duty on grey fabrics by such processing house is of no relevance for the entitlement of rebate as



claimed by them. Rebate is being claimed only on finished goods because exports having taken place. Yarn stage duty verification is not required in such cases.

- 7.7 They are entitled for interest since the claims have not been settled within period of 3 months. For this they rely on CCE Salem Vs Jansons Exports, 2007(220) E.L.T. 895 (Tri-Chennai); CCE Indore Vs Prem Textile Ltd. 2005.(181) E.L.T..69 (Tri-Del.).
- 7.8 They strongly rely upon recent decision dated 31.03.2011 by the Division bench of High Court of Gujarat at Ahmedabad in Special Civil Application No. 814 of 2011 in the case of Commissioner of Central Excise & Customs Surat-I Vs Royal Reyon, Surat on the admissibility of rebate claims of the merchant exporter even though some fraud had been committed by the manufacturer supplier of the goods. This decision has also been upheld by the Hon'ble Supreme Court and thus the afore stated decision of the Gujarat High Court has achieved finality. Their rebate claims are squarely covered by the above decision.

8. Personal hearing in these cases was scheduled on 30.11.2017, 27.12.2017, 01.02.2018 and 20.08.2019 and on 12.12.2017, 08.02 2018, 10.12.2018 and 20.08.2019 respectively. However, neither the Department nor M/s Krishna Exports, who were applicants in the respective Revision Applications appeared for the personal hearing on the appointed dates. Further, there was no correspondence from them seeking adjournment of hearing. Hence, Government proceeds to decide these cases on merits on the basis of available records.

9. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

10. Government observes that M/s Krishna Exports, Surat, had filed 20 rebate claims for rebate of duty amounting to Rs. 54,38,629/-and the original authority vide Order in original No.1902/2011-12/DC (Rebate)/ Raigad dated 27.01.2012 rejected the said rebate claims.

11. Commissioner (Appeals) vide impugned Order-in-Appeal No. US/439/RGD/2012 dated 11.07.2012 partially allowed the appeal filed by the M/s Krishna Exports, Surat by upholding the rejection of 8 rebate claims collectively for Rs.25,58,296/- and by setting aside the rejection of the remaining 12 rebate claims collectively for Rs.28,80,396/- with consequential relief.



12. In their Revision application, the department has contended that during the material time DGCEI, Vadodara & Surat Commissionerate had detected several cases of non-existent / bogus firms who were purportedly either supplying fabrics or processing grey fabrics; that 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 fabrics suppliers & utilized the said bogus credit for payment of central excise duty on exports goods; that Alert Lists were issued by several investigating agencies such as DGCEI and local CX & Customs Preventive formations; that the merchant exporter himself i.e., M/s Krishna Exports was appearing in four Alert Lists; that the names of the processors were appearing in the Alert Lists; that in the instant case, the export goods had been procured by M/s Krishna Exports from such processors; that an opportunity was given to claimant/ merchant exporters for submission of document / records regarding the genuineness of the availment of Cenvat credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-I. However, the claimant did not submit any such documents proving the genuineness of the Cenvat credit availed & subsequently utilized by processors for payment of duty on the above exports; that the duty paid by the processors out of the Cenvat credit accumulated was not free from the doubt.

13. In this regard Government observes that the Commissioner (Appeals) while partially allowing the appeal filed by the M/s Krishna Exports, Surat by setting aside the rejection of the 12 rebate claims collectively for Rs.28,80,396/- with consequential relief, has considered issues such as simultaneous availment of Notification No. 29/2004-CE dated 09.07.2004 and Notification No. 30/2004-CE dated 09.07.2004, non tallying of chapter sub heading numbers in Excise invoice with that appearing in the shipping bill, name and designation of the authorized signatory not appearing on the invoices and ARE-1s, non submission of separate disclaimer from the processors and wrong address of the rebate sanctioning authority etc. and decided them in the favour of M/s Krishna Exports, Surat. However, the Commissioner (Appeals) has failed to discuss the main ground i.e. the procurement of export goods by M/s Krishna Exports, Surat in all these rebate claims from the various processors who were appearing in the Alerts Lists issued by various Central Excise and Customs Commissionerates of Mumbai, Thane and Surat as well as DGCEI, Vadodara as discussed by adjudicating authority at paras



Nos. 36, 37 of the Order in Original No. 1902/2011-12/DC (Rebate)/ Raigad dated 27.01.2012. Government further notes that in order to verify the authenticity of the Cenvat Credit availed by the processors, on the strength of invoices so received from grey fabrics suppliers and the subsequent utilization of such Cenvat Credit for payment of central excise duty on the above mentioned exports made by the merchant exporters, an opportunity was given to M/s Krishna Exports, Surat for submission of documents / records regarding genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-1. However, M/s Krishna Exports, Surat did not submit any such document proving the genuineness of Cenvat Credit availed and subsequently utilized by the processors for payment of duty on the above exports either before the adjudicating authority or before the Commissioner (Appeals). In view of the above, setting aside the rejection of 12 rebate claims amounting to Rs. 28,80,396/- with consequential relief relying on M/s Krishna Exports, Surat's submission that only in one case, goods were processed and cleared from M/s Swastik Poly Prints only and the remaining goods were processed and cleared from the other three processors who had not received any show cause notice in respect of input credit or export pertaining to 19 consignments by the Commissioner (Appeals) was improper.

14. Government finds that in the instant case the suppliers of grey fabrics did not exist. The transaction shown as supplier of grey fabrics on central excise invoices was found to be a fraudulent and bogus transaction created on paper to wrongly avail the Cenvat credit for the purpose of bogus payment of duty and irregular/fraudulent availment of rebate.

15. Government observes that M/s Krishna Exports in their Revision Application have mainly contended that the payment of duty on grey fabrics by such processing house is of no relevance for the entitlement of rebate as claimed by them. Rebate is being claimed only on finished goods because exports have taken place. Yarn stage duty verification is not required in such cases and that they strongly rely upon recent decision dated 31.03.2011 by the Division bench of High Court of Gujarat at Ahmedabad in Special Civil Application No. 814 of 2011 in the case of Commissioner of Central Excise & Customs Surat-I Vs Royal Reyon, Surat on the admissibility of rebate claims of the merchant exporter even though some fraud had been committed by the manufacturer supplier of the goods. This decision has



also been upheld by the Hon'ble Supreme Court and thus the afore stated decision of the Gujarat High Court has achieved finality and that their rebate claims are squarely covered by the above decision.

16. Government observes that 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. 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 judgement has been upheld by the Hon'ble High Court of Gujarat. 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 Gujrat, 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 observes that the contention of M/s Krishna Exports is 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 non-existent, the petitioner cannot be claimed rebate merely on the strength of exports made."

Incidentally, the case law referred to by M/s Krishna Exports has also been distinguished in the aforesaid judgment.

The object of the MODVAT/CENVAT scheme was to offset the cascading effect of taxes and to avoid double taxation. In other words, the purpose was to ensure that the inputs which had suffered tax at the hands of the supplier would



not again suffer the levy of tax at the time of clearance of the final products. The intent of the legislature was that the goods once taxed should not again be subject to tax and therefore the tax paid at one stage was allowed as credit in the next stage for payment of duty on the final product. However, if the origin of the Cenvat credit availed by the processor itself is found to be fraudulent, the use of such fraudulent Cenvat credit would also be unauthorized. As correctly held by the courts, fraud vitiates everything. Notwithstanding the fact as to whether the goods have been cleared for home clearance or for export, the duty liability remains attached to the excisable goods till the time the duty is not discharged. Therefore, if the duty payment on the export goods is out of the pool of Cenvat credit which is fraudulent, the duty liability on the exported goods cannot be said to have been discharged and therefore rebate on export of such goods would not be admissible.

18. Government observes that since the duty paid character of exported goods was not proved in the instant case, which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002, the rebate claims are not admissible to M/s Krishna Exports, Surat.


19. In view of above discussion, Government sets aside Order in Appeal No. US/439/RGD/2012 dated 11.07.2012 passed by the Commissioner, Central Excise (Appeals II), Mumbai to the extent it set aside rejection of 12 rebate claims collectively amounting to Rs.28,80,396/- with consequential relief.

20. The Revision Application No. 198/244/12-RA filed by the Deputy Commissioner, Central Excise Rebate, Raigad is allowed and the Revision Application No. 195/1270/12-RA filed by M/s Krishna Export, Surat is rejected.

21. So, ordered.

ATTESTED

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


(SEEMA ARORA)

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

H52-H53

ORDER No. /2020-CX (WZ) /ASRA/Mumbai DATED 19.03.2020.



The Commissioner of CGST, Belapur,
CGO Complex, Sector 10, C.B.D. Belapur,
Navi Mumbai -400 614.

2. M/s Krishna Exports,
Turning Point Complex,
Ghodhdhod Road, Surat 395 001.

Copy to:

1. The Commissioner (Appeals) of Central Goods & Service Tax, Raigad, 5th Floor, CGO Complex, Belapur, Navi Mumbai -400 614.
2. The Deputy / Assistant Commissioner (Rebate), Belapur, CGO Complex, Sector 10, C.B.D. Belapur, Navi Mumbai -400 614
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file,
5. Spare Copy.

