

F.No.195/491/2011-RA  
F.No.195/494/2011-RA  
F.No.195/496/2011-RA

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सत्यमेव जयते

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.195/491/2011-RA / 4281  
F.No.195/494/2011-RA  
F.No.195/496/2011-RA

Date of Issue: 04.11.19

ORDER NO. 46-48/2019-CX (WZ)/ASRA/MUMBAI DATED 30.09.2019 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 : M/s Jhawar Biotech P Ltd.

Respondents : 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. M-1/RKS/09/2011  
dated 05.01.2011, M-1/RKS/53/2011 dated 08.02.2011 and  
M-1/RKS/09/2011 dated 05.01.2011 passed by the Commissioner  
(Appeals-I), Central Excise, Mumbai-I.

ORDER

These three Revision Applications are filed by M/s Jhawar Biotech P. Ltd., 1<sup>st</sup> Floor, Bldg No. 6, Udit Mittal Estate, Andheri Kurla Road, Andheri (East), Mumbai 400 059 (hereinafter referred to as "the Appellant") against the Order-in-Appeal Nos. M-1/RKS/09/2011 dated 05.01.2011, M-1/RKS/53/2011 dated 08.02.2011 and M-1/RKS/09/2011 dated 05.01.2011 passed by the Commissioner (Appeals-I), Central Excise, Mumbai-I.

Sl. No	Total Rebate claims	Amount (Rs)	OIO No. & date	OIA No. & dt	Revision Application filed by Applicant
1	19 claims	9,26,210	199/R/2006 dated 22.03.2006 - rejected	M-1/RKS/09/2011 dated 05.01.2011- appeal rejected	195/491/2011
2	08 claims	15,88,525	10/R/06 dated 10/13.01.2006 - sanctioned. Deptt then filed appeal	M-1/RKS/53/2011 dated 08.02.2011- Set aside the OIO and Deptt appeal allowed	195/494/2011
3	19 claims	23,72,313	251/R/2006 dated 05.04.2006 - rejected	M-1/RKS/08/2011 dated 05.01.2011- appeal rejected	195/496/2011

2. The issue in brief is that

In respect of Sl.No. 1:

2.1 The Appellant had filed rebate claims in respect of 19 ARE-1s and Shipping Bills amounting to Rs. 9,26,210/- (Nine Lakhs, Twenty Six

Thousand, Two Hundred and Ten Only) under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER').

- 2.2 On scrutiny of the rebate claims, it was noticed that the appellants had not followed the procedure for clearance of goods under self sealing/ self certification for export under claim of rebate as given in Chapter 7 & 8 of the CBEC's Excise Manual of Supplementary Instructions and in Board's Circular No. 426/59/98-CX dated 12.10.1998, issued from F.No. 209/08/98 CX and the subsequent amendment vide Circular No. 736/52/2003 CX dated 11.08.2003 issued under F.No. 201/1/2003-CX.6 and also in the Trade Notice No. 45/2001 dated 09.10.2002, issue by the Mumbai I Commissionerate. It was also noticed that the Appellants had submitted unsealed duty payment certificate, which were issued on 22.11.2004.
- 2.3 A Deficiency-Memo-cum-SCN-cum-Call for personal hearing was issued to the Appellant vide letter F.No. V(15)Reb/Ch.54/2005 dated 25.04.2004 for the following:
- (i) submission of the copy of the acknowledgement of prior intimation to the jurisdictional Superintendent/ Assistant/ Deputy Commissioner with respect to clearance of goods in question from the factory under self-sealing and self certification or alternatively to submit a certificate from the jurisdictional Superintendent/Assistant/ Deputy Commissioner that the goods were cleared under self-sealing

and self certification under prior intimation to the department.

(ii) Submission of the genuiness of the duty payment certificate issued by the jurisdictional Range Superintendent after re-verifying of Cenvat etc.

2.4 Copies of the memo was also endorsed to the jurisdictional Range Superintendent to confirm the correctness and genuiness of the duty payment certificate issued by them after verifying the Cenvat credit availed by the manufacturer, in the make of frauds committed by some of the textile exporters and manufacturer in various Commissionerate.

2.5. The jurisdictional Range Superintendent vide letter F.No. C.Ex./R-II/A/Jhawar/M-I/2005 dated 19.07/2005, informed that M/s Jhawar Biotech has availed Cenvat credit on the basis of invoices issued by firms which was declared bogus as per Alert Circular issued by Commissioner, Central Excise and Customs, Surat-1 Commissionerate vide letter F.No. IV/12-HPU-III/9/04-05 Pt.IV dated 05.04.2005.

2.6 The Assistant Commissioner (Rebate), Central Excise, Mumbai-I rejected their rebate claims vide Order-In-Original No. 199/R/2006 dated 22.03.2006 on the grounds that the exported goods were not duty paid.

2.7 Aggrieved, the Appellants then filed appeal with the Commissioner(Appeal), Central Excise, Mumbai-I who vide Order-

in-Appeal No. M-1/RKS/09/2011 dated 05.01.2011 rejected their appeal.

In respect of Sl.No. 2

- 2.8 The Appellant had filed rebate claims in respect of 08 ARE-1s and Shipping Bills amounting to Rs. 15,88,525/- (Fifteen Lakhs, Eighty Eight Thousand, Five Hundred and Twenty Five Only) under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER').
- 2.9 On scrutiny of the rebate claims, it was noticed that the appellants had not followed the procedure for clearance of goods under self sealing/ self certification for export under claim of rebate as given in Chapter 7 & 8 of the CBEC's Excise Manual of Supplementary Instructions and in Board's Circular No. 426/59/98-CX dated 12.10.1998, issued from F.No. 209/08/98 CX and the subsequent amendment vide Circular No. 736/52/2003 CX dated 11.08.2003 issued under F.No. 201/1/2003-CX.6 and also in the Trade Notice No. 45/2001 dated 09.10.2002, issue by the Mumbai I Commissionerate. It was also noticed that the Appellants had submitted duty payment certificate in loose/ open, which were issued on 22.11.2004.
- 2.10 A Deficiency-Memo-cum-SCN-cum-Call for personal hearing was issued to the Appellant vide letter F.No. V(15)Reb-27/05 dated 25.04.2005 for the following:
- (i) submission of the copy of the acknowledgement of prior intimation to the jurisdictional Superintendent/ Assistant/

Deputy Commissioner with respect to clearance of goods in question from the factory under self-sealing and self certification or alternatively to submit a certificate from the jurisdictional Superintendent/Assistant/ Deputy Commissioner that the goods were cleared under self-sealing and self certification under prior intimation to the department.

- (ii) Submission of the genuiness of the duty payment certificate issued by the jurisdictional Range Superintendent after re-verifying of Cenvat etc.

2.11 the Assistant Commissioner(Rebate), Central Excise, Mumbai-I vide his Order-in-Original No. 10/R/06 dated 10/13.01.2006 were in his findings he relied on the directions of the Commissioner of Central Excise, Mumbai conveyed by Additional Commissioner(Tech) C.Excise vide his letter F.No. V(30)Rebate/6/T/2005 dated 19.08.2005 and hence prior intimation to the jurisdictional Range Superintendent was not mandatory and the manufacturer exporter has fulfilled his obligations as required under the self sealing and self certification procedure. And further in his findings stated that the Appellant had submitted the required duty payment certificates in the tamper proof sealed cover from the jurisdictional Range Supdt and the said Superintendent has also certified that the duty payment by the manufacture is genuine. The goods cleared under the above ARE-1s are also exported as evident from the original and duplicate copy of ARE-1 and shipping Bills certified by the Customs

Officers. Accordingly the rebate claims were sanctioned to the Appellant.

- 2.12 The said Order-in-Original dated 10/13.01.2006 was reviewed by the Commissioner, Central Excise, Mumbai-I Commissionerate, in exercise of powers vested under Section 35E(2) of Central Excise Act, 1944 and vide order dated 05.01.2007, the Assistant Commissioner(Rebate), Central Excise, Mumbai-I Commissionerate was directed to file appeals against the impugned Order-in-Original dated 10/13.01.2006.
- 2.13 Accordingly, the department then filed appeal with the Commissioner(Appeal), Central Excise, Mumbai on the following grounds :
- (a) that the Appellant had purchased grey fabrics from some of the suppliers who were fake/ bogus/ non-existing at their given address. The suppliers of grey fabrics in their statement recorded under Section 14 of Central Excise Act, 1944, have admitted that they had not supplied any goods but only duty payment documents were supplied to the Appellant. -
  - (b) that the official representative of the Appellant has categorically stated that the availment of Cenvat credit by them on the basis of fake/ bogus invoices is wrong and they are ready to reverse/ pay back the wrongly availed Cenvat credit.

- (c) that the availment of Cenvat credit on the basis of fake/ bogus/ fictitious documents thereby making payment against this fake/ fabricated Cenvat credit which is nothing but non-payment of duty and thus the granting of rebate in such cases amounts to sanction against non-payment of duty.
- (d) that the said rebate claim is sanctioned erroneously.

In view of the above the impugned Order-in-Original dated 10.01.2006 sanctioning rebate claim is not legal and proper & hence liable to be set aside.

2.14 The Commissioner(Appeals), Central Excise, Mumbai-I vide Order-in-Appeal No. M-1/RKS/53/2011 dated 08.02.2011 set aside the Order-in-Original No. 10/R/2006 dated 10.01.2006 and allowed the appeal filed by the Revenue with consequential relief.

In respect of Sl. No. 3:

2.15 The Appellant had filed rebate claims in respect of 19 ARE-1s and Shipping Bills amounting to Rs. 23,72,313/- (Twenty Three Lakhs, Seventy Two Thousand, Three Hundred and Thirteen Only) under Rule 18 of the Central Excise Rules, 2002 (herein after as 'CER').

2.16 The Appellants had procured the goods covered under the ARE1s from the following manufacturers :

- (i) M/s Para Tex (India)
- (ii) M/s Vinayak Deying Works



(iii) M/s Detco Textiles Pvt Ltd.

- 2.17 On scrutiny of the rebate claims, it was noticed that the appellants had not followed the procedure for clearance of goods under self sealing/ self certification for export under claim of rebate as given in Chapter 7 & 8 of the CBEC's Excise Manual of Supplementary Instructions and in Board's Circular No. 426/59/98-CX dated 12.10.1998, issued from F.No. 209/08/98 CX and the subsequent amendment vide Circular No. 736/52/2003 CX dated 11.08.2003 issued under F.No. 201/1/2003-CX.6 and also in the Trade Notice No. 45/2001 dated 09.10.2002, issue by the Mumbai I Commissionerate. It was also noticed that the Appellants had submitted duty payment certificate in loose/ open, which were issued in the month of January' 2005 and February'2005. In some cases the duty payment particulars were endorsed in the triplicate copy of the ARE-1s by the jurisdictional Range Superintendent in the month of March' 2005.
- 2.18 On the basis of various alerts issued by various Commissionerates informing frauds committed by the textile manufacturers/ exporters by way of availing Cenvat credit on the basis of invoices issued by onon-existent/ bogus grey suppliers, which was further used to pay the duty on goods exported and to claim fraudulent rebate of the same, and with a view to re-verify the duty payment certificates submitted by the Appellant, a Deficiency-Memo-cum-SCN-cum-Call for personal hearing was issued to the Appellant vide letter F.No. V(15)Reb/Ch.54/2005 dated 25.04.2004 for the following:

- (i) submission of the copy of the acknowledgement of prior intimation to the jurisdictional Superintendent/ Assistant/ Deputy Commissioner with respect to clearance of goods in question from the factory under self-sealing and self certification or alternatively to submit a certificate from the jurisdictional Superintendent/Assistant/ Deputy Commissioner that the goods were cleared under self-sealing and self certification under prior intimation to the department.
- (ii) Submission of the genuines of the duty payment certificate issued by the jurisdictional Range Superintendent after re-verifying of Cenvat etc.

2.19 A separate Deficiency-Memo-cum-SCN-cum-Call for personal hearing was issued to the Appellant vide letter F.No. V(15)Reb/Ch.54/2005 dated 12.09.2005 and F.No. V(15)Reb/94/2005 dated 29.09.2005 requesting the Appellant to submit the duty payment certificate in temper proof sealed cover from the jurisdictional Range Superintendent. A Copy of the memo was also endorsed to the jurisdictional Range Superintendent to confirm the correctness and genuiness of the duty payment certificate issued by them after verifying the Cenvat credit availed by the manufacturer, in the make of frauds committed by some of the textile exporters and manufacturer in various Commissionerate.

- 2.20. The jurisdictional Range Superintendent vide letter F.No. C.Ex./R-II/A/Jhawar/M-I/2005 dated 19.07.2005, informed that M/s Jhawar Biotech was involved in claiming fraudulent rebate claims.
- 2.21 The Assistant Commissioner (Rebate), Central Excise, Mumbai-I rejected their rebate claims vide Order-In-Original No. 199/R/2006 dated 22.03.2006 on the grounds that the Appellant failed to submit the duty payment certificate in tamper proof sealed envelope in terms of Notification No. 19/2004 CE(NT) dated 06,09.2004.
- 2.22 Aggrieved, the Appellants then filed appeal with the Commissioner(Appeal), Central Excise, Mumbai-I who vide Order-in-Appeal No. M-1/RKS/08/2011 dated 05.01.2011 rejected their appeal.
3. Being aggrieved, the Applicant then filed the Revision Application on the following grounds :
- 3.1 That the Commissioner(Appeal) cannot seek to rely upon the jurisdictional Range Superintendent's letter F.No. C.Ex./R-II/A/Jhawar/M-I/2005 dated 19.07/2005 to deny them the rebate claim without giving them a copy of the said letter.
- 3.2 That the Commissioner(Appeal) has relied upon a SCN F.No.V-Adj(56)CSCN/M-1 15-22/08/422 to 455 dated 30.06.2008 which has culminate in Order-in-Original No. 13/M-1/2010 dated 30.03.3010 vide which the Cenvat credit wrongly availed and

utilized has been allowed and demand of Central Excise duty confirmed and suitable penalties has been imposed to state -

*"14.2 It has therefore been amply proved that the appellants have utilized cenvat credit wrongly availed by them, for payment of duty on the goods exported, and which has since been disallowed vide aforementioned Order-in-Original dated 31.03.2010, and hence the goods exported vide ARE-1s covered in this case cannot be considered as duty paid. Consequently, the question of payment of rebate claim on non-duty exported goods does not arise."*

The Appellant submitted that when the Cenvat credit has been disallowed and the goods have been exported, the Commissioner(Appeals) cannot seek to recovery duty twice by the Appellant – once by denying the Cenvat credit and another by rejecting the rebate claim by the Appellant. The rebate claim cannot be rejected on the basis of another Order-in-Original which seeks to recover the Cenvat credit from the Appellant along with interest and penalty.

- 3.3 that they were not provided with copies of the alleged Alert Circular declaring the said parties as fake parties. Moreover, no statements of the grey fabric suppliers were given to the Appellant who allegedly stated that only duty paying documents were provided.
- 3.4 that the Commissioner(Appeals) cannot deny its responsibility of supplying the copies of the alert circulars/ statements of the grey fabrics suppliers. The impugned orders issued without giving the

copies of the relied upon documents is in violation of the principles of natural justice.

- 3.5 that they had physically received the goods under the cover of valid invoices and the goods were validly exported. The original authority had clearly held that the export of goods is not in doubt as is evident from the Original and Duplicate copies of ARE-1s and shipping Bills duly certified by the Customs authorities and that the goods are also of 'duty paid character', as the duty payment certificates in tamper proof sealed cover are received from the jurisdictional Range Superintendent, and it is also certified by the Range Superintendent that the duty payment made by the manufacturer is genuine.
- 3.6 that the Appellants had physically received the goods and exported the same. The fact that they had made the payments to the grey fabric supplier vide account payee cheques which were cleared by the bank as is evidenced by the statement produced before the Commissioner(Appeals) prove that the parties were/ are in existences and had valid bank accounts. The said grey fabrics suppliers also had valid Central Excise registration and since the account payee cheques were cleared in the name of the parties. The Appellants fail to understand as to what other steps the Appellants were required to take to prove the genuines of the parties.
- 3.7 that when the grey fabrics have been accompanied with excise invoice showing the excise registration number of the grey manufacturer, it is illegal to allege that the Appellants have not

taken any steps to ensure the duty paid character of the inputs and we have suppressed the facts from the department that the suppliers/ manufacturers and / or the invoices of grey fabrics are bogus/ fake.

- 3.8 that moreover, the trade practice is that the deemed manufacturers / manufacturers would buy the grey fabrics and send it to the processors for processing and then the processors shall return the processed fabrics to the deemed manufacturer/ manufacturer.
- 3.9 that the diluted scheme of registration of weavers/ grey manufacturers etc ushered and administered by revenue during 2003-2004 through erstwhile Rule 12B and various CBEC Circulars made it impossible for processors to take any reasonable steps as is being made out in the show cause notice under reply. The CBEC itself vide Circular No. 703/19/2003-CX, dated 25.3.2003 issued from F. No. B3/1/2003-TRU has stated that credit be taken "*Only on the basis of the duty paying documents*" without any further investigations or physical verification.
- 3.10 that it is quite probable that on repeal of erstwhile Section 12B in September 2004, the grey weavers changed their names and shifted to different premises for evading Income tax, etc as the whole scheme of bringing the grey weavers under Cenvat chain was opposed by them for months together in 2003. During the said agitation by grey weavers and subsequently, CBEC went on relaxing/diluting the basic requirements in regard to registration. After completely diluting the process of registration, Revenue cannot

turn back in 2005 and declare all or most of the grey weavers as fake to escape in May and September 2005. This amounts to revenue escaping from the consequences of its wrongs, omissions and commissions during February' 2003 to July' 2003 and the same is impermissible in law. It is settled that nobody can take advantage of its own wrong.

3.11 that the CBEC Circular No. 703/1912003-CX, dated 25.3.2003 issued from F. No. B3/1/2003-TRU states that

*" 2. The purpose of the new rules is to allow the textile sector to carry on the work as they have been doing all along, and not to disturb the trade practices. It would be sufficient if the manufacturers or the deemed manufacturers keep account of production & clearance, pay duty accordingly and take credit only on the strength of duty paying documents. There is no need for any physical verification of premises, goods or records unless there is a specific intelligence suggesting evasion."*

The Appellants submitted that the CBEC circular states that the manufacturers or deemed manufacturers shall take credit only on the strength of the duty paying documents and there is no need for any physical verification of premises, goods or records and that the CBEC Circular is binding on the revenue vide the Supreme Court judgment in Collector of Central Excise, Vadodara Vs Hiren Chemical Industries [2002 (143) E.L.T. 19(S.C.)] wherein it held that regardless of the interpretation placed by it on that phrase, if there were circulars which had been issued by the Central Board of Excise and Customs which placed a different interpretation upon

that phrase, that interpretation would be binding on the Revenue. It is not disputed that there are circulars issued by the Central Board of Excise and Customs which place a different interpretation upon that phrase and which apply to the facts of these two appeals.

3.12 that when goods was actually exported, rebate cannot be rejected. Since there is no denial of the fact of the said goods having been physically exported, the Appellants cannot be made liable for any alleged fake invoices issued. The appellants seek to rely upon the following:-

- (i) Garima Enterprices (P) Ltd, Vs Commissioner of Central Excise, Delhi-IV [(182) E.L.T. 106 (Tri. - Del.)] wherein it is held that *raw materials received by appellant and not bogus modvatable invoices - Raw materials sent by appellants to job workers for conversion and conversion charges paid to job worker - Modvat credit admissible - Rules 57A and 57G of erstwhile Central Excise Rules, 1944 - Rules 3 and 9 of Cenvat Credit Rules, 2004.*
- (ii) Haryana Steel Alloys Vs Commissioner of Central Excise, New Delhi [2002 (148) E.L.T. 377 (Tri. - Del.)] wherein it is held that credit was admissible. The appellant was purchasing scrap from registered dealers. Registered dealers were in their invoices showing the scrap as duty paid. The invoices have not been found to be bogus. If at all anybody was manipulating the invoices it was the registered dealer and therefore, the demand, if any, of duty should have been raised against the registered dealers.



- 3.13 that therefore, the denial of rebate claim to the Appellant is illegal as the credit taken and passed on to the Appellant by the grey fabrics suppliers has become final and irrevocable. They rely upon the case law in Commissioner of Central Excise, Chandigarh Vs Sadashi Casting (P) Ltd.[2005 (187) E.L.T. 381 (Tri. - Del.) *Cenvat/Modvat - Demand - Limitation - Invoices under which assessee received inputs from registered dealers having contained all information, assessee not to cause further investigation to ensure that appropriate duty paid on inputs - Fraud, collusion or suppression of facts on part of assessee not established by Revenue - Demand time-barred - Rule 57-I of Central Excise Rules, 1944 - Section 11A of Central Excise Act, 1944 - Rule 9 of Cenvat Credit Rules, 2004. [para 2].*
- 3.14 that since the Appellants have exported the goods as per the ARE-1, the rebate cannot be denied to them on the ground that the processor had not taken reasonable steps.
- 3.15 that since the department has not taken any action against the grey fabrics suppliers, the denial of rebate to the appellants is illegal. It is surprising/shocking that the grey fabrics suppliers alleged to be fake or bogus have not even been made a party to the show cause notice. The appellants inter alia, rely upon A. B. Tools Ltd Vs Commr. Of C.Ex. Chandigarh [2002 (149) E.L.T. 908 (Tri. - Del.)]-to say that payment made to them by traders and the registration granted to the weavers by the dept should be considered before acting upon the alert circular bereft of any evidence. Further, they relied on the case law in Commissioner of Central Excise, Kolkata-II Vs Lalbaba Industrial Corporation [2005 (071) RLT 0672 (CESTAT-

Kol.)) – the transporter's copy on which the credit was availed by the Responder were forged and for such irregularity committed by the dealer, the respondent cannot be held responsible. The revenue failed to point out any irregularity or describing in the invoice issued by the dealer. Therefore, the dealer invoice which regular in all respect is proper Modvatable documents. Appeal filed by the department is rejected. (Para. 3)

3.16 that since there is no allegation of non-grant of registration to the weavers who supplied grey to the traders/brokers through whom they received the grey fabrics and invoices, only on the basis of alert circular, credit validly availed by the Appellant cannot be rejected by way of non granting of rebate. The appellants, inter alia, rely upon following authorities:-

- (i) Garima Enterprises (P) Ltd Vs Commr. of C.Ex. Delhi-IV  
[2005 (182) E.L.T. 106 (Tri. - Del.)];
- ii) Amarsri Engineering Co. Vs Commr. of C.Ex., Belgaum  
-[2006 (205) ELT 0659 (Tri.- Bang.)] (Paragraph 6);
- (iii) Commissioner of C.Ex. & Customs, Nashik Vs Silver Ispat (P) Ltd. [2007 (078) RLT 0240 (CESTAT-Mum.)]

3.17 that regarding demand of interest, the Appellants refer to Circular No. 670/61/2002-CX, dated 1.10.2002 which states that under the provisions of section 11 BB of Central Excise Act, 1944 that wherever the refund/ rebate claim is sanctioned beyond the prescribed period of three months of filing of the claim, the interest thereon shall be paid to the applicant at the notified rate. They also

rely on Commr. of Cus. & C.Ex. Indore Vs Prem Textile Ltd. [2005 (181) E.L.T. 69 (Tri. - Del.)] wherein it was held that the *Department is liable to pay interest at the stipulated rate from the date immediately after the expiry of three months from the date of receipt of refund application - Rule 18 of Central Excise Rules, 2002 - Section 11BB of Central Excise Act, 1944. - As per Explanation 'A' to Section 11B of Central Excise Act, 1944, refund includes rebate of duty of excise on excisable goods exported out of India or excisable material used in the manufacture of goods which are exported out of India.*

3.18 that they prayed for setting aside the three impugned Orders-in-Appeal and to grant them the Rebate/Refunds with interest.

4. The Applicants delayed filing the three Revision Applications, the details of which are as given below:

Sl. No	OIA No. & dt	Revision Application	Date RA recd and No. of delay	Application for COD date
1	M-1/RKS/09/2011 dated 05.01.2011(Recd on 11.01.2011)	195/491/2011	20.05.2011 one month and 9 days	Filed on 31.07.2017
2	M-1/RKS/53/2011 dated 08.02.2011 (Recd on 11.03.2011)	195/494/2011	24.05.2011 13 days	Filed on 31.07.2017
3	M-1/RKS/08/2011 dated 05.01.2011 (Recd on 11.01.2011)	195/496/2011	04.05.2011 One month & 13 days	Filed on 31.07.2017

Hence defect memos was issued to the Appellants to file miscellaneous application for condonation of delay (herein after as 'COD') in respect of all the

three revision applications. The Appellants then on 31.07.2012 filed Applications for COD respect of all the three revision applications.

5. A personal hearing was held in this case on 30.10.2017, 13.11.2017, 05/06.12.2018 and 19.08.2019. However no one attended the hearing.

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 first proceeds to take up the application for COD in filing the Revision application by the Applicants. After hearing the three COD applications in detail, Government has observed that due to postal/courier delay there was delay in filing the Revision Applications and in the interest of justice Government condones the delay details as given in Para 4 above and proceeds to examine the case on merits.

8. On perusal of records, Government observes that the Applicant's rebate claims made under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 - C.E.(NT) dated 06.09.2004 was rejected on the ground as mentioned in para supra.

7. In terms of Notification No. 19/2004 CE(NT) dated 06.09.2014 as amended issued under Rule 18 of the CER,

*"In exercise of the powers conferred by rule 18 of the Central Excise Rules, 2002*

.....

**(2) Conditions and limitations :-**

(a)...;

(b)....;

(c)..... ;

(d).... ;

(e) ....;

(g) ....;

**(3) Procedures:-**

**(a) Sealing of Goods and examination at the place of dispatch and export:-**

(i) .....

(ii) ....;

(iii) ....;

(iv) For the sealing of goods intended for export, at the place of dispatch, the exporter shall present the goods along with four copies of application in the Form ARE-I specified in the Annexure to this notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse;

(v) The said Superintendent or Inspector of Central Excise shall verify the identity of goods mentioned in the application and the particulars of the duty paid or payable, and if found in order, shall seal each package or the container in the manner as may be specified by the Commissioner of Central Excise and endorse each copy of the application in token of having such examination done;

(vi) The said Superintendent or Inspector of Central Excise shall return the original and duplicate copies of application to the exporter;

(vii) The triplicate copy of application shall be -

(a) sent to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) ...;

(viii) The exporter may prepare quadruplicate copy of application for claiming any other export incentive. This copy shall be dealt in the same manner as the original copy of application;

(ix) Where goods are not exported directly from the factory of manufacture or warehouse, the triplicate copy of application shall be sent by the Superintendent having jurisdiction over the factory of manufacture or warehouse, who shall, after verification, forward the triplicate copy in the manner specified in sub-paragraph (vii);

(x) .....

(xi) 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 on all the copies of the application that the goods have been sealed in his presence, and shall send the original and duplicate copies of the application along with the goods at the place of export, and shall send the triplicate and quadruplicate copies of the 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;

(xii) In case of self-sealing, the said 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-

(a) send to the officer with whom rebate claim is to be filed, either by post or by handing over to the exporter in a tamper proof sealed cover after posting the particulars in official records, or

(b) .....

(xiii) ....;

(xiv) .....

(xv) The officer of customs shall return the original and quadruplicate (optional copy for exporter) copies of application to the exporter and forward the duplicate copy of application either by post or by handing over to the exporter in a tamper proof sealed cover to the officer specified in the application, from whom the exporter wants to claim rebate:

Provided that where the exporter claims rebate by electronic declaration on the Electronic Data Inter-change system of Customs, the duplicate shall be sent to the Excise Rebate Audit Section at the place of export.

(xvi) The exporter shall use the quadruplicate copy for the purposes of claiming any other export incentive.

**(b) Presentation of claim for rebate to Central Excise:-**

(i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.

(c) .....

(d) .....

(e) .....

*Explanation 1 - .....*

Government observes that in respect of Sl. No. 1 & 3, the Appellants have not submitted the duty payment certificates in tamper proof sealed envelopes and in respect of Sr.No. 2 the Appellant had submitted the same. Government finds that the core aspect in determination of rebate claim is the fact of manufacture of goods exported and payment of duty thereon and its subsequent export. The burden of duty borne on the said goods exported are prime factor in determining the sanction of rebate claims. The plea taken by the Appellants in Sl. No. 1 & 3 that the exported goods procured by them were duty paid is not acceptable, as they failed to submit the duty payment certificates in prescribed tamper proof sealed envelopes. As such, the Government finds that in respect of Sl.No. 1 & 3, the exported goods cannot be said to be proper duty paid goods and rebate claims, were rightly rejected by the Commissioner(Appeals) in two Orders-in-Original both dated 05.01.2011.

8. Government also observed that in respect of Sl.No. 1 & 3 rebate claims were also rejected by adjudicating authority on the ground that the duty on exported goods was paid out of Cenvat credit taken on invoices raised by fake/fictitious firm/persons. The said orders-in-original was upheld by Commissioner (Appeals). And in respect of Sl. No. 2, the original adjudicating authority had sanctioned the rebate claim, however the Department then filed an appeal as the Appellant had purchased grey fabrics from some of the suppliers who were fake/ bogus/ non-existing at their given address and the Commissioner(Appeals) then set aside the OIO dated 08.02.2014 and allowed the appeal filed by the department. Subsequently, the Appellant have filed three

revision application against three orders of Commissioner (Appeals) on the ground stated supra.

9. Government observes that in respect of Sl.No. 1 & 3, the jurisdictional Range Superintendent vide his letter F.No. C.Ex./R-II/A/Jhawar/M-1/2005 dated 19.05.2005 informed the department that the Appellants was involved in claiming fraudulent rebate claims. And Government also observes that in respect of Sl. No. 2, the Commissioner(Appeals) in his findings at Para 7 and 8 –

*“7. The appellants in their appeal memorandum have contended that the investigations conducted in the matter have revealed that the respondent-assessee i.e. M/s Jhawar Biotech P. Ltd had purchased grey fabrics from some of the suppliers mentioned in the Alert Circulars issued by Surat-I Commissionerate and it was found that majority of suppliers were bogus/ fake and non-existing at their address, as detailed in the Annexure-A to the appeal memorandum. Further, during the investigation, some of the suppliers were traced and their statements were recorded under Section 14 of the Central Excise Act, 1944, wherein they have inter alia, admitted that they had not supplied any goods but had supplied only duty paying documents to M/s Jhawar Biotech P. Ltd. This clearly indicates that M/s Jhawar Biotech P. Ltd have managed to procure duty paying documents without accompanying the goods in order to avail Cenvat credit facility with intent to avail benefit of duty payment, which was not due to them.*

*7.1 It has been further contended in the appeal memorandum that during the investigations, a statement dated 10.08.2006 of Shri Vikas Nandkishor Jhawar, official representative of M/s. Jhawar Biotech P.Ltd and Director of M/s. Vamatex (India) Ltd., was recorded under Section 14, wherein he has admitted that he had not checked the genuineness of the Cenvatable invoices supplied with the goods purchased, that he has never visited the factory premises/manufacturing process*



*of any of the suppliers of grey fabrics; that the grey fabrics received by them along with the invoices cannot be co-related or held to be goods on which Central Excise duty has been discharged as stated in the said invoices, as the invoices are now proved to be fake and bogus and issued by fictitious/non-existing parties; that availment of Cenvat credit on such invoices is wrong and the same was not eligible for being used to debit against clearance of finished goods manufactured and cleared by them as deemed manufacturer against claim for rebate under erstwhile provisions of Rule 12B; that they have taken Cenvat credit on fictitious documents. In view of the above, he agreed to reverse/pay back such wrongly availed Cenvat credit and also confirmed that the amount of Cenvat credit wrongly utilized by M/s. Jhawar Biotech P.Ltd is Rs. 1,02,40,314/-.”*

10. Government observes that in Sl. No. 2, the Appellant had not filed any cross-objections to the contention made by the Department in their appeal memorandum before the Commissioner(Appeal). In this regard, it is observed that during investigation by department the suppliers of grey fabrics were found non-existent and accordingly vide Alert Circular issued by Commissioner of Central Excise, Surat-I. The Government notes that what remains a fact is that due investigations were indeed done and the proper authorities conclusively proved that the instant cases are “frauds” involving fake/fictitious identities and the Appellant had agreed to reverse/pay back such wrongly availed Cenvat credit and also confirmed that the amount of Cenvat credit wrongly utilized by M/s. Jhawar Biotech P.Ltd is Rs. 1,02,40,314. It is also a fact that both Exporter and Processor have signed the ARE-1. Hence Government finds that Appellant cannot escape his responsibility under the Rules on the pretext that he was not involved in bogus transactions

11. Government observes that it was trade practice that deemed manufacturers/manufacturer would buy the grey fabrics and send it to processors for processing and then the processors shall return the processed fabrics to deemed manufacturers. As such the applicant also appears to be a deemed manufacturer who has procured the goods from suppliers of grey fabrics and got it processed from the processors. Since the suppliers of grey fabrics did not exist the transactions shown as supplier of grey fabrics on central excise invoices, are fraudulent and bogus to wrongly avail the Cenvat credit and irregular/fraudulent availment of rebate claims.

12. 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 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."*

13. 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 also observes that the contention of the Appellant 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."*

14. 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 ie., 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.

15. Further Government also relies in the case of M/s Poddar Exports (India) Vs Union of India [2015(316) ELT 179 (Guj)] Hon'ble High Court Gujarat while dismissing the Special Civil Application filed by the petitioner observed as under :-

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

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

*"Basically the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire*

*basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made."*

*In the present ease also, there are concurrent findings of fact given by all the authorities below with respect to the fake transactions between the petitioner and M/s. Raju Synthetics Pvt. Ltd., we are of the opinion that all the authorities have examined the case in detail and as such no interference is called for. The conclusions arrived at by the authorities below are on the basis of evidence on record and such conclusions are not pointed out to be perverse. Under the circumstances, as such no interference in exercise of powers under Articles 226 & 227 of the Constitution of India, therefore, can be made.*

16. In view of above, Government finds that duty paid character of exported goods was not proved, which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002. Therefore, Government holds that the rebate claims are not admissible to the Applicants. As such, Government finds no infirmity in the 03 impugned Orders-in-Appeal.

17. In view of above discussions and findings and also applying the ratio of afore stated cases law, Government holds that the impugned Orders of Commissioner (Appeals) are legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned Order-in-Appeal Nos. M-1/RKS/09/2011 dated 05.01.2011, M-1/RKS/53/2011 dated 08.02.2011 and M-1/RKS/09/2011 dated 05.01.2011 passed by the Commissioner (Appeals-I), Central Excise, Mumbai-I and upholds the same.

15. The three Revision Applications filed by the Applicant are thus dismissed being devoid of merit.

F.No.195/491/2011-RA  
F.No.195/494/2011-RA  
F.No.195/496/2011-RA

16. So ordered.



(SEEMA ARORA)

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

ORDER No: ~~46-48~~ 2019-CX (WZ)/ASRA/Mumbai DATED 30.09.2019.

To,  
M/s Jhavar Biotech P. Ltd.,  
1<sup>st</sup> Floor, Bldg No. 6,  
Udit Mittal Estate,  
Andheri Kurla Road,  
Andheri (East), Mumbai 400 059.

Copy to:

1. The Commissioner (Appeals), Central Excise , Mumbai-1.
2. The Commissioner of Central Excise, Mumbai-1
3. The Assistant Commissioner(Rebate), Central Excise, Mumbai-1
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.