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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.195/111-113/2012-RA
F.No.195/215/2012-RA

/8400

Date of Issue: 28.07.2020

ORDER NO. ⁶⁷²⁻⁶⁷⁵ /2020-CX (WZ)/ASRA/MUMBAI DATED 20.04. 2020 OF
THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

- Applicants : 1. M/s Doshi Impex
2. Shri Narendra Doshi, Partner in M/s Doshi Impex

Respondent : 1 & 2 - Commissioner, Central Excise, Mumbai -I.

Subject : Revision Application filed, under Section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. YDB/86-
88/M-I/2011 dated 25.11.2011 passed by the Commissioner
(Appeals), Central Excise, Mumbai Zone-I

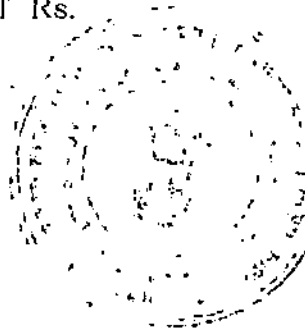


ORDER

These Revision Applications are filed by M/s Doshi Impex and Shri Narendra Doshi, Partner, 87, Ashoka Shopping Centre, Ground Floor, G.T. Hospital Compound, L.T. Marg, Mumbai 400 001 (hereinafter referred to as "the Applicants") against the Orders-in-Appeal No. YDB/86-88/M-I/2011 dated 25.11.2011 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2. The issue in brief is that the Applicants purchased grey fabrics from various suppliers under Central Excise invoices, on which they had availed Cenvat credit of the duty, cleared the same for export under claim of Rebate/ under Bond during the period 2003-04 and 2004-05, which was sanctioned by the Division A/ Assistant Commissioner(Rebate), Central Excise, Mumbai-I.

3. On receipt of an Alert Circular dated 19.05.06 issued by the Commissioner, Central Excise, Surat-I, that the during the period 2003-04 and 2004-05 the Applicants had availed Cenvat credit to the tune of Rs. 34,35,608/- on the basis of input invoices issued by non-existent/ bogus firms viz. M/s Vinayak Textiles, Surat, M/s Anjani Fashion, Surat, M/s Apex Corporation, Bhiwandi, M/s Dhanlaxmi Trades, Surat, M/s Vinay Textiles, Surat, M/s Rama Silk Mills, Surat, M/s Magnum Enterprises, Surat, M/s Ambica Syntex, Surat, M/s TBYTE Impex, Surat and M/s Radhika Impex, Surat. Further, irregularities were pointed out in availment of Cenvat credit to the extent of Rs. 7,71,711/- in respect of invoices issued by M/s Kusum Silk Mills and Rs. 3,94,970/- in respect of double entry of the same fabric in RG-I account. Hence the Applicants were issued Show Cause Notice dated 09.07.2008 for recovery of duties. The Additional Commissioner, Central Excise, Mumbai-I in Order-in-Original No. 23/MI/2010-11/Addl dated 11.03.2011 confirmed the demands of Rs.

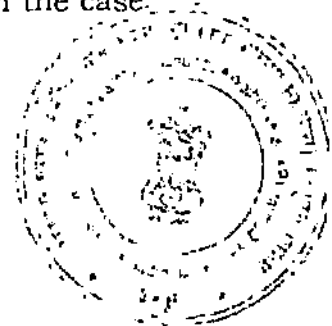


34,35,608/- and Rs. 3,94,970/- being refunds granted erroneously to the Applicant and disallowed wrongly availed Cenvat credit amounts to Rs. 7,71,711/- and ordered for its recovery along with interest and imposed a penalty of Rs 46,02,289/- on the Applicant and a penalty of Rs. 5,00,000/- on the second Applicant.

4. Aggrieved, the Applicants filed an appeal along with a stay application before the Commissioner(Appeals), Central Excise, Mumbai Zone-I. The Applicant's stay application was decided by the Commissioner(Appeals) on 10.08.2011 directing the Applicant to deposit of 50% of the duty demanded along with 50% of penalty imposed within four weeks of the receipt of the stay order and on compliance, which was to be reported on or before 12.09.2011, the remaining amount of duty and penalty of the Applicant and the entire penalty imposed under Rule 26 of Central Excise Rules, 2002 on Shri Naresh Doshi, Partner was ordered to be waived, till final disposal of appeal. Upon non compliance of the Stay Order dated 10.08.2011, within stipulated time, the appeal was ordered to be dismissed without any intimation of the Applicants. As the Applicants did not comply with the waiver order dated 10.08.2011, and also did not apply for extension of time to comply the same. They rather submitted, an application dated 23.09.2011 to modify the said Stay Order. The Commissioner(Appeals), Central Excise, Mumbai Zone-I vide Orders-in-Appeal No. YDB/86-88/M-I/2011 dated 25.11.2011 dismissed their appeals.

5. Being aggrieved, the Applicant then filed the current Revision Application on the following grounds :

- The pre-deposit order was issued without going into the merits of the case and the appeal had been mechanically dismissed for non-compliance with the condition of pre-deposit.
- The Commissioner(Appeals) has an inherent power to modify his own order as has been held by the Hon'ble Madras High Court in the case.



of Indotex Machinery Vs Assistant Collector [1997 (28) ELT 265 (Mad.)) wherein it was held that the stay once refused does not operate as res-judicate if party renews the request for stay by placing necessary material for justification of the interim relief earlier refused. The Applicant was never called upon to furnish their Balance Sheet, but has in their modification application had attached the latest Balance Sheet showing that they had no funds to pay the hefty pre-deposit amount. The Commissioner(Appeals) was therefore bound to look into this change in circumstance but on failed to so.

- The only allegation against them is that they have availed irregular Cenvat credit on the basis of invoices issued by bogus/non-existent firms. The adjudicating authority in the Order-in-Original has accepted that out of the ten firms alleged to be bogus, four firms were in existence viz Vinayak Textiles, Vinay Textiles, Ambica Syntex Pvt Ltd and Radhika Impex. Further M/s Apex Corporation was also found to be in existing and the only reason cited by the jurisdictional Superintendent for denying the credit as per his report dated 30.04.2007 is that credit availed by M/s Apex Corporation is bogus. Insofar as the remaining five firms are concerned viz Anjani Fashions, Dhanalaxmi Traders, Rama Silk Mills, Magnum Enterprises and TByte Impex, the Applicants had submitted copies of their registration certificates and Central Excise Returns belonging to these firms. The above leads to an inevitable conclusion that the above firms were in existence at the material point of time.
- The Applicant is a Star Export House and has been in the export business from the year 1996 and is a regular exporter. They never had been found to have indulged in any malpractice. Even the Department has admitted that out of Rs. 65,22,288/- taken as credit, only Rs. 34,35,608/- appear to be incorrect, while the rest was found to be genuine.



- One of the firms i.e. M/s Ambica Synthex had appeared before the adjudicating authority and had contested the allegation in the Show Cause Notice that it was a fake/bogus firms and also acknowledged the delivery of fabrics to the Applicant after payment of Central Excise duty. Unfortunately, the adjudicating authority had not given any findings on the pleas raised by M/s Ambica Synthex and had just imposed penalty of Rs. 96,830/- without citing any reasons. Like wise, M/s Apex Corporation had also caused its presence before the adjudicating authority, however, adjudicating authority had turned a nelson's eye towards the same. Once M/s Ambica Synthex and M/s Apex Corporation have been found to be existing firms inspite of an alert notice, no credence can be placed on alert circulars and no demand can be raised on the basis of such alert circulars.
- In case of M/s Vinayak Textiles, M/s Vinay Textiles and M/s Radhika Impex, the credit involved is Rs. 9,24,994/- and the observation of the Range report is merely that the credit availed by these parties is fake/bogus and that it cannot be ascertained as which material had been sent to the Applicant. In the case of Ambica Synthex Pvt. Ltd. wherein, a credit of Rs.96,830/- is involved, it is the observation in the range report that the supplier of input has not paid the duty to the government. The Applicant submitted that recovery of rebate on this is nothing but a serious error of law. It is not in dispute that they had received the goods under the cover of invoices carrying duty payment particulars. In this regard, it is a settled position of law that such credit ought to be recovered from the supplier who has passed on such irregular credit.
- Similarly, in the case of M/s Apex Corporation, no enquiries have been made regarding its existence and the firm has been declared to be bogus only on the ground that Shri K.K.Gupta was one of the Directors who was suspected of floating some other firms for availing incorrect rebate claims. If Shri K.K.Gupta was available, why did not



the investigating officers contact him and questioned him regarding supply of grey fabrics by M/s Apex Corporation to the Applicant and whether he has received any payment or not. There is no evidence of any flow back of money to the Applicant from the input suppliers. In the absence of any such evidence, it cannot be said that the input fabrics was not received by the Applicant and therefore, refund claim cannot be denied on the plea that credit taken was irregular.

- The Applicant not only maintained all the statutory records but also filed all the statutory returns viz. the ER-1 Return along with the Cenvat Return with the department from time to time. Appellant also filed the extract of the RG-23A Part-II along with all its returns. All the details were within the domain of the department in the year 2003-2005 itself.
- Since Applicant cannot be charged with any suppression of fact, fraud or misrepresentation, penalty cannot be imposed under Section 11AC of the Central Excise Act, 1944. The impugned order imposing a penalty of Rs.46,02,289/- is therefore, liable to be set aside on this ground.
- The Applicant prayed that impugned Order-in-Appeal be quashed and set aside.

6. A personal hearing in the case was held on 04.10.2019 which was attended by Ms Sparsh Prasad, Advocate, on behalf of the Applicant. The Applicant submitted that Commissioner(Appeals) rejected their appeals on the grounds of non-deposit of pre-deposit ordered. They are having financial hardship and submitted the Balance sheet for the year 2017-18.

7. 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.

8. Government observes that the present Revision Applicants have been filed by the Applicants against the Commissioner(Appeals), Central Excise,

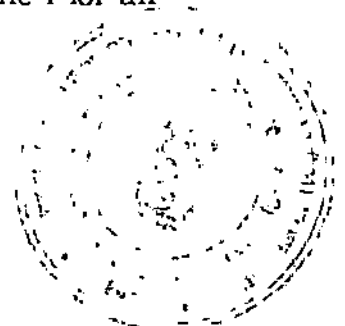


Mumbai Zone-I Orders-in-Appeal No. YDB/86-88/M-I/2011 dated 25.11.2011, dismissing their appeal against the Order-in-Original dated 11.03.201, for non-compliance of the Pre-deposit Order dated 10.08.2011 passed under Section 35F of the Central Excise Act, 1944.

9. Government observes that the Applicant is a registered Star Export House and there is no record of it having indulged in malpractice. The department itself has admitted that out of Rs. 65,22,288/- taken as Cenvat credit, only Rs. 35,35,608/- appeared to be incorrect, the rest was found to be genuine. From the Order-in-Original, it can be gleaned that the department has itself accepted that out of the 10 firms alleged to be non-existent, ~~four firms~~ four firms were in existence. Further, two of the supplier firms viz M/s Apex Corporation and M/s Ambica Synthex did participate in the adjudication proceedings hence they have been found to be existing firms in spite of a alert notice. In respect of the remaining firms the Applicant have submitted copies of the registration certificate obtained and the excise returns submitted by these units at the material time. Further, the Applicant has submitted that they are having financial hardship and also submitted their Financial Statement for the year ending 31st March, 2018

10. Government observes that the applicant have made a strong case in favour consideration of the issue on merits without insisting on pre-deposit. In this regard Government places reliance on the ratio held by the Hon'ble High Court Allahabad in case of Standard Gram Udyog Sansthan Versus Union Of India [2016(344) ELT) 79]All.) that *"In view of decision of Tribunal in 2013 (291) E.L.T. 409 (Tribunal) in a similar matter, petitioner has a strong prima facie case in his favour and Commissioner (Appeals) directions of 25% pre deposit, would cause serious prejudice - Pre-deposit fully waived and appellate authority directed to decide appeal expeditiously."*

11. Therefore, Government in the interest of justice remands the matter back to the Commissioner (Appeals), Central Excise, Mumbai Zone-I for an



appropriate decision based on merits without insisting on any pre-deposit
The appeal, however, may be heard and decided expeditiously.

12. The revision application is disposed off in the above terms.
13. So ordered.

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

472-475
ORDER No. /2020-CX (WZ)/ASRA/Mumbai DATED 20.04.2020.

To,
M/s Doshi Impex,
Shri Naresh Doshi, Partner,
87, Ashoka Shopping Centre,
Ground Floor, G.T. Hospital Compound,
L.T. Marg,
Mumbai 400 001.

ATTESTED

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

Copy to:

1. Commissioner (Appeals), Central Excise, Mumbai Zone-I
2. The Commissioner of CGST, Mumbai South
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.

