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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. 195/732/06-RA
F. No. 195/94/07-RA

3465

Date of Issue:

~~05-2020~~
28.04.2020

ORDER NO. 482-483 /2020-CX (WZ) /ASRA/MUMBAI DATED 29.05.2020
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.

Applicants : M/s Karishma Overseas, Surat.
412A, Turning Point Complex,
Ghod Dod Road, Surat- 395 001.

Respondents : Commissioner of CSGT & Central Excise, Mumbai South.

Subject : Revision Application filed, under Section 35EE of
Central Excise Act, 1944 against the Order-in-Appeal
CPA(3146)/115/MI/2006 dated 25.08.2006 passed by
the Commissioner of Central Excise (Appeals), Mumbai -I.



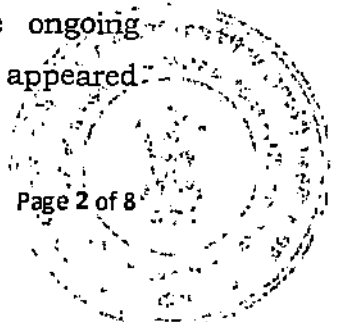
ORDER

These revision applications have been filed by the applicant M/s Karishma Overseas, Surat against tile, orders-in-appeal No. passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I. The details as under :-

Sr. No.	Revision Application No.	Applicant	Against Order-in-Appeal No. and Date
1.	195/94/07-RA	M/s Karishma Overseas, Surat	CPA/3191/160/M-I/2006 dated 23.03.2007
2.	195/732/06-RA	M/s Karishma Overseas, Surat	CPA/3146/115/M-I/2006 dated 25.08.2006

2. Brief facts of the case in Revision Application No. 195/732/06-M & 195/94/07-RA are that the applicants had filed rebate claims in respect of duty paid on the goods manufactured by M/s Globe Traders, M/s Mansa Traders & M/s Radha Dying & Printing Mills. The goods have been exported through Mumbai port under various ARE-1s. Deficiency Memo-cum-Show Cause Notice-cum-call for personal hearing were issued to the applicants requesting them to submit the copy of the acknowledgement of prior intimation given to jurisdictional Supdt./ Asstt/Dy. Commissioner with respect to clearance of the goods in question from factory under self-sealing and self-certification, or alternatively to submit a certificate from Jurisdictional Asstt. /Dy. Commissioner / Range Supdt. confirming that the goods were cleared under self-sealing and self-certification under prior intimation to the department. A copy of the same was also forwarded to the said Supdt. requesting him to confirm the genuineness of the duty paying certificates after verifying the details of Cenvat Credit availed by the

manufacturer in the wake of recent frauds detected and the ongoing investigations in various Commissionerates. The applicants neither appeared



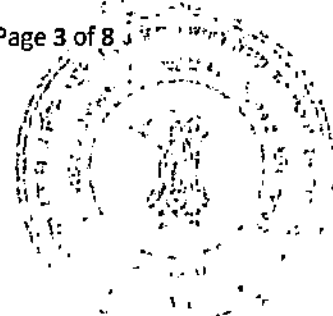
for the personal hearing fixed for the purpose nor have they given any written submissions-in the case. The applicant was asked to produce the duty payment certificate from jurisdictional Range Supdt. in a temper-proof sealed cover. The Asstt. Commissioner (Prev.) Central Excise, Thane-1 Commissionerate informed that a Central Excise case of fraudulent Cenvat Credit availment against the supplier of the goods, who were found to be involved in Cenvat Credit on the basis of invoices raised by the non-existent companies and utilized the same for duty payment on goods cleared for export and thereafter to avail rebate of the said duty. The Asstt. Commissioner, Central Excise, Mumbai-I vide Order-in-Original No. 122/R/06 dated 27.02.2006 rejected all the rebate claims.

3. Being aggrieved by Order in Original, the applicants filed appeals before Commissioner (Appeals), who after consideration of all the submissions rejected the same vide impugned Order in Appeals.

4. Being aggrieved by impugned order-in-appeal, the applicants had filed these revision applications before Central

5. Government had after due consideration of oral and written submissions of the applicants and after due perusal of the orders passed by the lower authority along with the relevant case records, deliberated upon and allowed appeals by holding that the ratio of GOI order No.304-307/07 dated 18.5.2007 in the case of M/s Shyam International, Mumbai was applicable to the case as the merchant exporter cannot be denied the rebate claim for the reason that the manufacturer has availed cenvat credit wrongly on the basis of bogus duty paying documents especially when there is no evidence to show any mutuality of interest, financial control, any flow back or fund flow between merchant exporter and manufacturer/supplier of goods.

6. On being aggrieved by the above Government of India Revision Order No. 433-434/07-Cx dated 10.07.2007 for M/s Karishma Overseas, Surat and

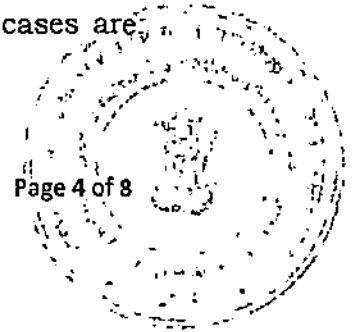
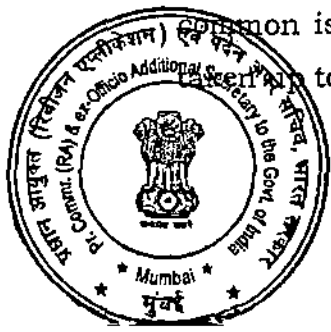


G.O.I., the respondent department preferred a writ petition No. 10375/2009 before the Hon'ble High Court of Jurisdiction at Bombay.

7. The Hon'ble High Court vide common orders dated 28.06.2011 (as made applicable to various writ petitions) has remanded the cases for denovo proceedings for deciding the cases in light of its judgment dated 27.6.2011 in W.P.No.3956 of 2010.

8. The personal hearing in the matter was fixed on 03.12.2019, 10.12.2019 & 08.01.2020. Neither the applicant nor the respondent attended the same. From the records available in the case file, it is found that the personal hearings for the above case were fixed on 01.06.2012, 28.06.2012 and 21.12.2012. Hearing held on 01.06.2012 in these cases was attended by Shri K.I.Vyas, Advocate on behalf of the applicant, reiterated above grounds of respective revision applications. Shri P.K. Bohra, Deputy Commissioner Division A, Mumbai-I, appeared for personal hearing on 21.12.2012 on behalf of respondent department and while reiterating submissions as already made on record also said that the outcome of investigations if any from jurisdictional officers against manufacturers s will be intimated in due course. He submitted his reply vide letter F. No. V(15)Feb/Ch.54/05-06 dated 18.12.2012, wherein it has been stated that no investigations were carried out against the merchant exporter who are applicants in these cases and records available in their office do not show any evidence or information regarding investigation of exporters with the allegedly fraudulent manufacturer-suppliers. Further, the Deputy Commissioner, CGST & CE, Division-III, Mumbai South vide his letter F. No. CGST/M.South/Div.III/Misc/3/2019-20/5146 dated 06.02.2020 replied that his office has not received legacy file /record in respect of the applicant from erstwhile Central Excise, Mumbai-I Commissionerate.

9. Government has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal. Since a common issue is involved in both these revision applications, the cases are together for decision by this common order.



10. Government notes that the applicant as merchant exporter purchased/procured their export goods (i.e. processed fabrics) from different manufacturers. There is no dispute to the factual details on record for the completion of exports and filing of claims of rebate in terms of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004-CD(NT) dated 06.09.2004. Government notes that such like issue has already been decided by the revisionary authority vide GOI Order No. 304-307/07 dated 18.5.07(F.No.198/320-323/06) in the case of M/s Shyam International Mumbai. In this case revision application was filed by department i.e. CCE Mumbai against the orders-in-appeal No. 326 to 329/M-III/2006 dated 18.05.06 passed by Commissioner of Customs and Central Excise (Appeals) Mumbai Zone-II. In the said GOI Order it was held that the merchant exporter cannot be denied the rebate claim for the reason that manufacturer has availed Cenvat Credit wrongly on the basis of bogus duty paying documents when there is no evidence to show that the applicant merchant exporter was party to fraud committed in fraudulent availment of cenvat credit.

11. Government notes that similar-issue was involved in the case of M/s Roman Overseas decided by Government vide G.O.I. order No. 129/10-CX dated 07.01.10 relying on said G.O.I. order No. 304-307/07 dated 18.05.07 in the case Shree Shyam international Mumbai. The above mentioned G.O.I. order No. 129/10-CX dated 07.01.10 was challenged by department in a writ petition filed before Gujarat High Court. The Hon'ble High Court of Gujrat vide order dated 31;03.11 reported as 2011 (270) ELT 321 (Guj.) has upheld the said G.O.I. order dated 07.01.2010. The para No. 10 to 15 of said judgment are reproduced below:

"10. From the material on record noted above, we find that insofar as respondent M/s Roman Overseas is concerned, it had purchased goods after payment of duty to the manufacturer. On such duty, respondent M/s Roman Overseas was within its rights to claim cenvat credit which was passed on by the seller of the goods i.e. M/s Unique Exports. It is of course a fact that such goods were not duty paid. Fact however, remains that there are no allegations that respondent M/s Roman Overseas was part of any such fraud, had any knowledge of the



fact that duty was not paid or that it had failed to take any precaution as required under sub-rule(3) of Rule 9 of Cenvat credit Rules which reads as under.

In view of above discussion, we find that respondent M/s Roman Overseas cannot be denied the benefit of rebate claims. Particularly, when there are no allegations that respondent M/s Roman Overseas either had knowledge or had even failed to take basic care required in law or in general terms to verify that goods were duty paid

language of Rule 18 however, may pose some question. In particular, it may be contended that Rule 18 envisages rebate for duty paid. Term duty paid as per the department would be duty paid to the Government and not otherwise and when no duty is paid, there can be no rebate. In our views, however Rule 18 also can be looked from this angle. Insofar as respondent M/s Roman Overseas is concerned, it had paid full duty partly by paying duty directly to the Government and partly by availing cenvat credit. To do so, they had made payment of part duty to seller of goods. Insofar as respondent M/s Roman Overseas is concerned, therefore, entire duty is paid by them of which it is claiming rebate of the duty paid on excisable goods upon eventual export.

3)

4) *Reliance was placed on decision in case of Sheela Dyeing & Printing Mills P. Ltd. vs. CCE & C, Surat; (reported in 2008 (234, ELT408 (GO), wherein issue involved was whether while taking cenvat credit on inputs, the applicant had taken reasonable steps to ensure that goods are duty paid. It was in this background relying on sub-rule (2) of Rule 7 of Cenvat Credit Rules, Court found that appellant had failed to take such care. In the present case, we have already noticed that such averments and allegations are not on record. In fact findings are to the contrary.*

.14. *In the result, we are of the view that impugned orders require no interference. "*

Government notes that Hon'ble High Court has laid down the principles that rebate claim cannot be denied to merchant exporter if he is not party to fraud committed at manufacturer or input supplier end and he has paid duty on valid duty paying documents.

12. Government further notes that in this matter the alleged association/connivance of the applicant in 'fraudulent avilment of cenvat credit neither discussed nor any independent proof /investigation report

is appearing in case records before this authority. The results of



investigation conducted by the department in respect of involvement of applicant in fraudulent availment of Cenvat credit are not placed on record. Further it is also noted that in the background of proceedings of this matter, lower authorities have not followed the principle of individual verification of genuineness of transactions as laid down by Hon'ble Gujarat High Court in its order dated. 31.03.2011 in case of M/s Roman Overseas and other in SCA No.16269/2010 wherein the careful and analytical applicability of this authority's decision in M/s Shree Shyam International order No. 304-307 dated 18.052007] was upheld. The SLP No. CC 19577/11 filed by department against this order dated 31.03.2011 of Hon'ble High Court of Gujarat was dismissed by Hon'ble Supreme Court vide order dated 2.12.11. Applicant has also argued that he was not supplied the relied upon documents such as jurisdictional Superintendent of Central Excise report and alert circular issued by Commissioner Central Excise. The relied upon documents are required to be supplied to the noticee to comply with the principles of natural justice. In view of totality of all the above said details and the facts of the case, Government in the interest of natural justice finds it proper to remand back the case to the adjudicating authority for fresh consideration in the light of observation and discussions made in foregoing paras.

13. Government therefore sets aside the impugned orders and remands the case back to original authority for denovo consideration by taking into account the above observations and judgment dated 31.03.2011 of Hon'le Gujrat High Court. The applicant will be supplied the copies of relied upon documents and a reasonable opportunity of hearing be afforded to them.

14. The revision application is thus disposed of in terms of above.

15. So, ordered.

(SEEMA ARORA)

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

ATTESTED

B. LOKANATHAREDDY
Deputy Commissioner (R.A.)

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F. No. 195/94/07-RA

482-482
ORDER No. /2020-CX (WZ) /ASRA/Mumbai DATED 29.05.2020

To,

M/s Karishma Overseas, Surat.
412A, Turning Point Complex,
Ghod Dod Road, Surat- 395 001.

Copy to:

1. The Commissioner Of Central Goods & Services Tax, Mumbai South Zone, 15th Floor, Air India Building, Nariman Point, Mumbai- 400021.
2. The Assistant Commissioner (Maritime Commissioner), Division -II, Mumbai South Zone, 13th Floor, Air India Building, Nariman Point, Mumbai- 400021.
3. The Commissioner of Central Goods & Services Tax, (Appeals-I), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.



RECEIVED
S. LOKARAJI REDDI
Deputy Commissioner of Income Tax

