

REGISTERED POST
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, Cuffe Parade,
Mumbai- 400 005**

F. No. 195/637/2011-RA / 3313
F. No. 195/639/2011-RA

Date of Issue: 05.2020
20.07.2020

ORDER NO. 484-485/2020-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 Vikram International,
B-3225-30, 3rd floor,
Kohinoor Textile Market,
Ring Road, Surat- 395 002.

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
MI/RKS/14/2010 & MI/RKS/15/2010 both dated
08.12.2010 passed by the Commissioner of Central
Excise (Appeals), Mumbai -I.



ORDER

These revision applications have been filed by the applicant M/s Vikram International, Surat against Orders-in-Appeal No. MI/RKS/14/2010 & MI/RKS/15/2010 both dated 08.12.2010 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.	195/637/2011-RA	M/s Vikram International, Surat	MI/RKS/14/2010 dated 08.12.2010
2.	195/639/2011-RA	M/s Vikram International, Surat	MI/RKS/15/2010 dated 08.12.2010

2.1 Brief facts of the case in Revision Application No. 195/637/2011-RA are that the applicants, Merchant Exporter, had filed 12 rebate claims for the total amount of Rs. 20,37,044/- (Rupees Twenty Lakh Thirty Seven Thousand Forty Four Only) in respect of duty paid on the goods manufactured by M/s Bhomeeka Processors Pvt. Ltd, M/s Camay Export Pvt. Ltd., M/s Rupali Dyeing & Printing Mills, M/s Luthra Dyeing & Printing Mills and M/s Kritidha Silk Mills. The Rebate Sanctioning Authority observed that the duty payment certificate issued by M/s Bhomeeka Processors Pvt. Ltd, M/s Camay Export Pvt. Ltd., M/s Rupali Dyeing & Printing Mills and M/s Kritidha Silk Mills were submitted in loose / open and in respect of M/s Luthra Dyeing and Printing Mills, duty payment certificate were not produced. It was also observed that various Alert Circulars were issued by the Thane-I Commissionerate informing the frauds committed by the textile manufacturers and exporters by availing Cenvat credit on the basis of invoices issued by the non-existent/bogus grey suppliers which were further used to pay the duty on the goods exported and fraudulently claim rebate of the same. Deficiency Memo-cum-Show Cause Notice-cum-call for personal hearing was issued to the applicants. 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

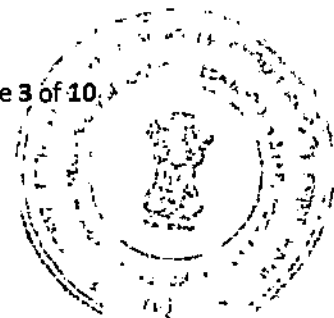


availed by the manufacturer in the wake of recent frauds detected and the ongoing investigations in various Commissionerates. The Jurisdictional Superintendent vide letter F. No. R-I/Div-1/Ann.D/2005 dated 29.03.2006 have informed that the Cenvat Credit availed by the manufacturer M/s Rupali Dyeing & Printing Mills has been disallowed on the basis of reports received from the destination Range Office. 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. However, the applicant failed to produce. The Asstt. Commissioner, Central Excise, Mumbai-I vide Order-in-Original No. 278/R/06 dated 17.04.2006 rejected all the rebate claims.

2.2 Brief facts of the case in Revision Application No. 195/639/2011-RA are that the applicants, Merchant Exporter, had filed rebate claim for Rs. 2,39,752/- (Rupees Two Lakh Thirty Nine Thousand Seven Hundred Fifty Two Only) in respect of duty paid on the goods manufactured by M/s Shree Laxmi Narayan Synthetics. The Rebate Sanctioning Authority had observed that the Shipping Bill No. endorsed by the Customs Officer on the duplicate copy of relevant ARE-1 was 100000878 dated 04.04.2003 where as the applicant submitted the copy of Shipping Bill No. 1000004778 dated 26.03.2003 along with the rebate claim. Further, Invoice No. 817 dated 08.03.2003 of the manufacturer, does not show number of packages or total number of packages. Deficiency Memo-cum-Show Cause Notice-cum-call for personal hearings were issued to the applicant. The applicant neither appeared for the personal hearing fixed for the purpose nor have they given any written submissions-in the case. The Asstt. Commissioner, Central Excise, Mumbai-I vide Order-in-Original No. 25/R/06 dated 16.01.2006 rejected the rebate claim.

3. Being aggrieved by Order in Originals, 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 Government on the following grounds :-



4.1 Grounds for filing Revision Application No. 195/637/2011-RA :-

4.1.1 There is nothing on the record to show that the Superintendent had forwarded by the post the said duty payment certificates in tamper proof cover. Thus, there is fault on the part of the superintendent for not sending ARE-1s in tamper proof sealed cover.

4.1.2 There is no provision under Central Excise Act, 1944 or rules framed thereunder for issuing separate duty payment certificate in sealed cover when on ARE-1, it is mentioned that "duty payable". It is prime duty of the Range Superintendent that the payment of duty can be verified from the monthly return submitted by the manufacturer and thereafter on the ARE-1 itself the duty paid nature of goods can be endorsed.

4.1.3 There is nothing on the record that the applicant had taken any option for taking over triplicate copy of ARE-1 in sealed cover.

4.1.4. The applicant is a merchant exporter who had made all the payments including the duty element on goods exported.

4.2 Grounds for filing Revision Application No. 195/639/2011-RA :-

4.2.1 The applicant had contacted the Custom House Agent in the matter who had issued the fresh Bill of Lading. The error was on the part of Customs Officials for putting shipping bill number as in the original ARE-1 there was correct shipping bill number 1000004778 dated 26.03.2003.

4.2.2 The factual position has clarified in their letter dated 02.02.2004 and 02.05.2005 may be get verified from Custom Authority who are competent authority for issuing the number and for the mistakes made on the part of the Customs Authorities.

4.2.3 As regards total number of packages it is submitted that no export will be permissible unless such packages are made and examined by the Custom Authorities. The objection is technical in nature.

5. For the purpose of further case proceedings these cases were then listed for personal hearing on 26.06.2003, 03.12.2019, 10.12.2019 and 08.01.2020.

Neither the applicant nor the respondent attended the same.



6. The Government requested CGST, Mumbai South Commissionerate to inform the the outcome of investigations if any from jurisdictional officers against manufacturers s will be intimated in due course. The 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.

7. 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 taken up together for decision by this common order. The Revision Application wise observations are as under :-

8. Revision Application No. 195/637/2011-RA :-

8.1 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.

8.2 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.

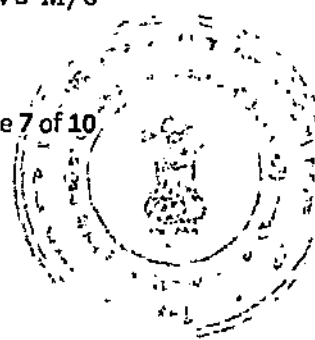
.14 In the result, we are of the view that impugned orders require no interference. "

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.

8.3 Government further notes that in this matter the alleged association/connivance of the applicant in 'fraudulent availment of cenvat credit neither discussed nor any independent proof /investigation report thereof 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. 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 filed under Revision Application No. 195/637/2011-RA to the adjudicating authority for fresh consideration in the light of observation and discussions made in foregoing paras.

8.4 However, the Government finds that the Jurisdictional Superintendent vide letter F. No. R-I/Div-1/Ann.D/2005 dated 29.03.2006 have informed that the Cenvat Credit availed by the manufacturer M/s Rupali Dyeing & Printing Mills has been disallowed on the basis of reports received from the destination Range Office. The rebate claim No. 4 for amount of Rs. 2,18,748/- out of total 12 claims was rejected for the same.

8.4.1 In this regard, the Government 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 i.e., 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 therefrom" and quashed the order of Revision Authority, sanctioning the rebate on such duty payments.

8.4.2 In view of above, Government finds that duty paid character of exported goods was not proved in respect of rebate claim at Sr. No. 4 which is a fundamental requirement for claiming rebate under Rule 18 of Central Excise Rules, 2002. Therefore, Government holds that the said rebate claim is not admissible to the applicant.

8.5 In view of above discussion, the Government sets aside the Order-in-Appeal No. M-I/RKS/14/2010 dated 08.12.2010 passed by the Appellate Authority 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'ble Gujrat High Court. The applicant will be supplied the copies of relied upon documents and a reasonable opportunity of hearing be afforded to them.

9. Revision Application No. 195/639/2011-RA :-

9.1 The Government observes that the impugned rebate claim was rejected on the ground that the shipping bill number endorsed by the Customs Authority on the duplicate copy of ARE-1 is different from the copy of shipping bill submitted by the applicant. The applicant further submitted that the error was on the part of Customs Officials and the shipping bill number in the original ARE-1 was correct shipping bill number 1000004778 dated 26.03.2003. In this case, Government finds that the applicant had produced the fresh copy of Bill of Lading issued by the CHA. The Government opines that the correct shipping bill number as well as the number of packages exported could have been verified / ascertained from such corroborative evidence before rejection of the impugned rebate claim.



9.2 It is now a trite law while sanctioning the rebate claim that the procedural infraction of Notification/Circulars etc., are to be condoned if exports have really taken place, and the law is settled now that substantive benefit cannot be denied for procedural lapses. Procedure has been prescribed to facilitate verification of substantive requirements. The core aspect or fundamental requirement for rebate is its manufacturer and subsequent export. As long as this requirement is met, other procedural deviations can be condoned. Such a view has been taken in Birla VXL - 1998 (99) E.L.T. 387 (Tri.), Alfa Garments - 1996 (86) E.L.T. 600 (Tri), Alma Tube - 1998 (103) E.L.T. 270, Creative Mobous - 2003 (58) RLT 111 (GOI), Ikea Trading India Ltd. - 2003 (157) E.L.T. 359 (GOI), and a host of other decisions on this issue.

9.3 In view of the discussions made above and keeping in mind the observations of Hon'ble Supreme Court in judgments cited supra and catena of decisions of Hon'ble CESTAT/Govt. of India that when substantive fact of actual export is not disputed, Government holds that denial of export relief in this case on the sole ground of technical lapses is not justified.

9.4 Government therefore sets aside the Order-in-Appeal No. M-I/RKS/15/2010 dated 08.12.2010 passed by the Appellate Authority and remands the case back to original authority for denovo consideration by taking into account the above observations. A reasonable opportunity of hearing be afforded to the applicant in the matter.

10. The revision applications are thus disposed of in terms of above.

11. So, ordered.

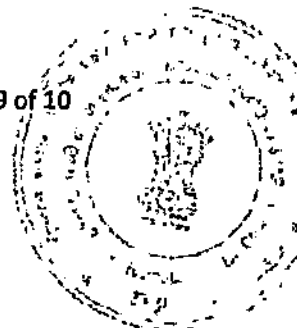
(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. ⁴⁸⁴⁻⁴⁸⁵ /2020-CX (WZ) /ASRA/Mumbai DATED 29.05.2020.

To,
M/s Vikram International,
B-3225-30, 3rd floor,
Kohinoor Textile Market,
Ring Road, Surat- 395 002.

ATTESTED

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



F. No. 195/637/2011-RA
F. No. 195/639/2011-RA

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.

03723774

11/05/2011 10:00:00 AM
11/05/2011 10:00:00 AM

