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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. 198/33/15-RA/2590

Date of Issue: 21.06.2022

ORDER NO. 636/2022-CX (WZ) /ASRA/Mumbai DATED 09.6.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of CGST & CX., Surat-I Commissionerate.

Respondent : M/s Rachna Art Prints Pvt Ltd

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. CCESA-VAD(APP-II) SSP-106 to 115/2014-15 dated 27.03.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara, Appeals-II, Surat.

ORDER

This Revision Application is filed by the Commissioner of CGST & CX., Surat-I Commissionerate (hereinafter referred to as "the Applicant") against the Orders-in-Appeal No. CCESA-VAD(APP-II) SSP-106 to 115/2014-15 dated 27.03.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara, Appeals-II, Surat.

2. Brief facts of the case is that M/s. Rachna Art Prints (Pvt.) Ltd., Plot No.243/1-244/B, GIDC, Pandesara, Surat, holder of Central Excise Registration No.AAECM1115DXM001 (hereinafter referred to as an "Respondent") had filed 10 rebate claims for amounting to Rs.20,95,210/- for the goods cleared for export on payment of duty vide different ARE-1s with the jurisdictional Assistant Commissioner, Central Excise,Dn.III,Surat-I as detailed below:

Sr. No.	Show Cause Notice No.	Rebate Claim Amounts
1	F.No.V(Ch.54) 18-38/09-10/R dated 29.08.2013	1,69,869/-
2	F.No. V(Ch.54) 18-23/09-10/R dated 29.08.2013	2,74,235/-
3	F.No. V(Ch.54) 18-22/09-10/R dated 29.08.2013	2,74,072/-
4	F.No.V(Ch.54) 18-21/09-10/R dated 29.08.2013	2,46,677/-
5	F.No. V(Ch.54) 18-97/09-10/R dated 30.08.2013	34,689/-
6	F.No.V(Ch.54) 18-1396/08-09/R dated 29.08.2013	2,75,486/-
7	F.No. V(Ch.54) 18-1397/08-09/R dated 29.08.2013	2,42,426/-
8	F.No. V(Ch.54) 18-1398/08-09/R dated 29.08.2013	2,42,428/-
9	F.No. V(Ch.54) 18-1399/08-09/R dated 29.08.2013	1,53,367/-
10	F.No.V(Ch.54) 18-1400/08-09/R dated 29.08.2013	1,81,961/-

The Respondent had received the grey fabrics from supplier M/s Iqra Tex, Plot No.37, Survey No.J-75 of Pakiza Industrial Estate, Bharimata Road, Tunki, Surat, ; M/s Sadik Textiles, 90-101, Narayan Ind. Estate, Anjana Farm, Surat and M/s Rajeshree Fabrics, 5, Navdiwala Estate, Vadod, Outside Saheli Jakatnaka, Pandesara Industrial Estate, Surat. The Jurisdictional Range Superintendents have reported that an inquiry is being conducted regarding disproportionate availment and fraudulent passing of Cenvat credit by DGCEI. A show cause Notice No.INV/DGCEI/BRU/39-2008 dated 10.05.2010 was issued by the Deputy Director, Directorate General of Central Excise Intelligence, Vadodara, Gujarat to M/s Vandana Overseas, 177/1,GIDC, Pandesra, Surat and the Respondent on the ground that the Respondent have shown purchase of grey fabrics on the strength of invoices of supplier/manufacturers, M/s Shree Sai Textiles, Anil Compound, Nirvan Bava no Akhado, Surat & M/s Vandana Overseas, plot No.177/1, GIDC Pandesara and only paper transactions were there, without actual supply/receipt of goods with intent to avail undue Cenvat credit and encash the same by claiming rebate. Hence , all these rebate claims and enclosed documents were forwarded by the Divisional Assisstant Commissioner(JAC) to the concerned Range Superintendent Range-I,Div-III (RS) on various dates for verification and scrutiny. Since there was lot of confusion, mismatch and non availability of relevant information to dispose off the subject appeals, all ten rebate claim files from which Show Cause Notices were issued were called from the office of JAC. On perusal, it was found that there were certain relevant information is not incorporated in the Show Cause Notices and Order in Original in respect of all the ten rebate claims. Therefore out of ten files, one randomly selected file representing the relevant facts, F.No.V(Ch.54)18-1399/08-09/R of Division-III Surat-I was selected and considered to avoid the unnecessary repetition of such information ten times in this Order. The said file shows that verification report after the verification of the related rebate claims was submitted, by the Range Superintendent vide his letter F.No.R-I/Rebate-Rachna/08-09 dated 11.08.2009, along with the all original documents to the office of JAC

for further action. The JAC while processing the said claim further after the receipt of required verification cum scrutiny report and original documents , issued Show Cause Notices to the exporter asking them as to why the rebate claims filed by them should not be rejected. The Show Cause Notices were decided by the JAC vide OIO No. SRT III/364 to 373/2014-15/R dtd. 11/08/2014 wherein he has rejected all the ten rebate claims amounting to Rs.20,95,210/-.

3. Aggrieved by the said order dated 11/08/2014, M/s. Rachna Art Prints Pvt. Ltd., Surat filed an appeal with the Commissioner (Appeals), Vadodara, Appeals-II, Surat and Ld. Commissioner (Appeals), Surat-I, vide his Order-in-Appeal No.CCESA-VAD(APP-II)/SSP-106 to 115/2014-15 dated 27.03.2015 issued on 03.04.2015 has set aside the impugned OIOs passed by the JAC and allowed the appeal with the contention that

- i. the verifying officers of Range level do not find any fraud or fake nature or bogus invoices relating to the rebate claims. Therefore, in absence of it, it can not be concluded that the relevant invoices on which Cenvat credit taken by the manufacturer exporter are fake or forged or bogus and export goods are cleared without payment of duty of appropriate duty of Central Excise and Cess .
- ii. the AC/DC has arbitrarily travelled beyond the legal requirement and at his own asked for following requirements which are otherwise available in departments file like Income Tax PAN and full address or are hard to fulfill like Range Superintendent is requested to verify the rebate claim in light of latest government orders, circulars, notification. Keeping in view the conclusive findings recorded by Adjudicating Authority vis-à-vis legal requirement and verification of reports of Range Superintendent, it is clear that adjudicating authority was not justified in rejecting subject rebate claims;
- iii. alert circular alerting concerned jurisdictional officers to be watch and more careful while dealing with invoices and grey fabrics manufacturer; that circular in no way stops the sanction of rebate if the facts like grey fabrics duty paid invoices, its receipt, correct

availment of Cenvat credit, export on payment of duty etc. are true and correct and there is verification report from Range Superintendent to that effect; then in such situation the said circular stands to be duly complied.

- iv. that considering the findings, there is no doubt that Respondent can take the cenvat credit of input duty paid by the supplier on such material received in their factory premises and accounted in their books of account.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application under Section 35EE of the Central Excise Act, 1944 before the Government on the following grounds :

- 1) In Rule 18 of Central Excise Rules, 2002 and Notification No. 40/2001-CE (NT) dated 26th June 2001, the words used are "grant rebate of duty paid on such excisable goods", "duty paid on all excisable goods" and "the excisable goods shall be exported after payment of duty. Thus the rebate can only be granted if the Central Excise duty on the goods has been paid and the goods have been cleared after payment of duty. But in the instant case the Cenvat credit was not available to the manufacturer i.e. M/s Rachna Art Prints Pvt. Ltd., as the invoices on the basis of which they availed the credit were fake and bogus and were issued by fake and bogus units. Hence, the Cenvat amount debited by them can not be considered as payment of duty and when the duty on the goods was not paid by the manufacturer then the question of rebate does not arise.

- 2) being claimant for rebate of duty on export of goods, it was obligatory for them to ensure that the payment of duty tendered by them as purchaser of goods was genuine evidencing proper duty paying documents. This aspect was required to have been ascertained by the Respondent before initiating export of goods. The rebate of such duty is only allowed under the Central Excise law when the duty has been discharged by the manufacturer.

- 3) the rebate claims also verified/scrutinized at divisional level in light of Alert Circular & as per direction given by the Additional Commissioner(Prev.) Central Excise & Customs, Surat-I vide letter F. No. IV/16-HPIU-VII/39/2008 dtd. 13/19.02.2009 and considering a huge revenue involvement running into crores of rupees due to issue of fake/bogus excise Invoices, it was felt necessary that before sanctioning rebate claims inquiry should be made regarding genuineness of the manufacturer and the in invoices on which Cenvat Credit has been availed and duty paid. Accordingly, the rebate claims pertaining to export of processed fabrics are required to be examined in respect of genuine nature of duty paid grey fabrics/yarn, physical manufacture & supply of grey fabrics/yarn, weight & GSM of the grey fabrics & processed fabrics, transport documents for movement of grey fabrics and processed fabrics, Lot Register & job-card of processed fabrics, details of payments made to the grey suppliers & processing units and their ledger accounts as well as correlation of the facts, figures, details & on verification it was noticed that the claimant is failed to clarify/submit the following documents : Copies of challans of Grey fabrics,Details regarding weight & GSM of grey fabrics,Transport documents I.e. L/R etc pertaining to movement of grey fabrics from the premises of suppliers of grey fabrics to the premises of the processing unit,Details of payment made to the suppliers/manufacturers of grey fabrics & their ledger accounts,Copies of invoices & challans of yarn manufacturers who have supplied yarn to the Grey manufacturers,Lot Register & job-card of processed fabrics,Details regarding weigth & GSM of processed fabrics exported,Transport documents i.e. L/R etc. pertaining to movement of processed,fabrics from the premises of the processing unit to the port,Details of payments of job charges made to the processing unit & their ledger accounts.
- 4) the concerned Range Superintendent of Central Excise has only verified the documents submitted by the Respondent along with the rebate claims and he has not checked/verified the rebate claims in

light of the observation as mentioned in Para 3 above. The jurisdictional Range Superintendent has only recommended the claim subject to verification Shipping Bill from the Customs authority. In one of the rebate claim of Rs. 34689/- the Range Superintendent clearly reported that the rebate claim is not admissible. Further, in respect of M/s. Rajeshree Fabrics, 5, Navdiwala Estate, Vadodara, out side Sahell Jakatnaka, Pandesara Endustrial Estate, Surat, the DGCEI Vadodara vide their letter F. No. INV/DGCEI/BRU/03/2008 dated 02.12.2008 reported that M/s. Rajeshree Fabrics has fraudulently passed on Cenvat Credit to the some exporters and not physically received goods in some of the case as shown in the purchase and had fraudulently availed the Cenvat Credit on it and on the other side, as they had not manufactured goods in case of supply made to such exporters. The Joint Commissioner (Prev.), Central Excise & Customs, Surat-1 vide their letter F. No. IV/12 HPIU-VI/30/2008-09 dated 05.12.2008 has also instructed that no rebate should be sanctioned in the rebate files where the grey Supplier is m/s. Rajeshree Fabrics, 5, Navdiwala Estate, Vadodara, outside Sahell Jakatnaka, Pandesara Industrial Estate, Surat.

- 5) the concerned Range Superintendent has not verified the cenvatable documents of the supplier unit i.e. M/s. Iqra Tex but made only endorsement that consolidated duty debited vide R.G. 23-A Pt.II Sr. No. 25 dated 30.09.2008 all input imported found in order. However, the Range Superintendent has requested to provide self attested copies of the relevant cenvatable documents of the supplier unit M/s. Iqra Tex which was passed on the said cenvat credit to the Respondent.
- 6) the Superintendent of Central Excise & Customs, Range-II of Division-II, Surat-I in respect of Rebate Claim filed by the Respondent, reported that as per available range records, one draft SCN F. No. DGCEI/AZU/36-160/2009-10 dated 24.02.2010 involving duty amount of Rs.10,17,418/- has been issued by the

Additional Director, DGCEI, Ahmedabad to M/s. Iqra Tex, Plot No. 37-38, Pakiza Indl. Society, Ved Road, Surat in respect of wrongly taken and utilized the Cenvat Credit on the basis of invoices issued by M/s. Parth Impex an also informed that out of total duty amounting to Rs. 10,17,418/-, Rs. 10,03,621/- has been reversed through Cenvat Credit Vide RG23A Part-II, E. No. 69 dated 11.03.2008 and rest amount of Rs. 13,737/- has been paid vide GAR-7 Challan No. 02/07-08 dated 12.03.2008 by M/s. Iqra Tex under protest. M/s. Iqra Tex has reversed the Cenvat Credit of Rs. 10,00,000/- and Rs. 7,37,631/- vide RG23 A Part-II E. No. 12 dated 09.12.2009 and E. No. 06 dated 10.07.2010 respectively under protest.

- 7) The Section 11-B of Central Excise Act, 1944 empowers only to the Assistant Commissioner of Central Excise & Customs to decide the Refund/Rebate claims filed by the assessee falls within the jurisdiction of Divisional office. It is the procedure of the department that refund/rebate claims are sent to the concerned Range Superintendent of Central Excise & Customs for verification only. In the Show Cause Notice there is no mentioned that the Show Cause Notice is issued on the basis of verification report of the Range Superintendent.
- 8) the adjudicating authority found that the Commissioner of Central Excise, Customs & Service Tax, Surat-1, vide Order-In-Original bearing No. 23/MP/2012-13 dated 18.02.2013, F. No. DRI/SRU/INV-03/2007 imposed penalty of Rs. 5 Lakh on M/s. Iqra Tex, Sr. No. 75, Plot No. 37, Pakiza Indi. Estate, Bharimata Road, Tunki, Surat after observing that the above said grey supplier firms had abetted and aided to the exporter In claiming rebate benefits knowing fully well that they have not supplied any goods whatsoever but given documents only to the respondent. In the Annexure-D the range Superintendent made endorsement that consolidate duty debited vide RG-23-A Pt.II and input found in order. The concerned

Range Superintendent has not verify the details as narrated at para 3 above.

- 9) The respondent has purchased the Grey fabrics from supplier M/s. Iqra Tex, Plot No. 37, Survey No. J-75 of Pakiza Industrial Estate Barimata Road, Tunki, Surat and processed by themselves and it is necessary to check the genuineness of goods received from the grey supplier. The Assistant Commissioner has verify the claims in light of Alert Circular and departmental guidelines and made observations/findings as discussed in para 3 above.
- 10) In Order-In-Original, it is clearly mentioned that the Respondent has purchased maximum quantity of Grey Fabrics from the grey supplier namely M/s. Iqra Tex, Plot No. 37, Sr. No. J-75 of Pakiza Industrial Estate, Barimata Road, Tunki, Surat and M/s. Sadik Textiles, 90, 101, Narayan Indl. Estate, Anjana Farm, Surat and M/s. Rajshree Fabrics, 5, Navdiwala Estate, Vadod, outside Sahell Jakatnaka, Pandesara Industrial Estate, Surat.
- 11) The Hon'ble Commissioner (Appeals) failed to discuss Range Superintendent's verification report. In verification report, the Superintendent has mentioned that the Additional Commissioner (Prev.) of Central Excise & Customs, Surat-I informed that facts regarding disproportional availment and fraudulent passing of cenvat credit by M/s. Iqra Tex, Surat is brought to notice to take necessary care while passing any rebate claim by units using invoices of M/s. Iqra Tax and to take necessary action to safe guard Government revenue.
- 12) It is to mention that as discussed at para 4,5,6 & 7 of Order-In-Original dated 11.08.2014, the duty payment on the said exported goods from a pool of such non-existent credits accumulated in the cenvat account of the manufacturer's cannot be treated as actual duty payments and the said export clearances are to be treated as clearance without payment of duty and the Impugned rebate claims made by claimant which were made out of such duty payments.

- 13) the Commissioner (Appeals) failed to appreciate the judgment of Hon'ble Supreme Court of India in the case of M/s. Hari Chand Shri Gopal as reported in 2010 (260) ELT-3 (SC) according to which, person who claims exemption or concession has to establish that he is entitled for such exemption or concession and burden to prove lies on them.
- 14) the Commissioner (Appeals) failed to appreciate that the judgment of Hon'ble CESTAT in the case of Chintan Processors reported in 2008(232)ELT-663 (Tri.Ahm.) wherein it has been held that once the supplier is proved non-existent, it is to be held that the goods have not been received. However, an applicant's claim that they have received goods, but how they have received from non-existent supplier is not known".
- 15) the Commissioner (Appeals) failed to appreciate that the Govt. of India in a similar case (Order No.537-572-CX dated 26.05.2011 in the case of M/s Vikram Knittex Pvt. Ltd., Surat rejected the rebate claims, wherein invoice of fake grey manufacturer is used. In that case, the applicant purportedly acquired grey fabrics from various suppliers and got it processed from the processor who have taken the Cenvat credit on the basis of invoice issued by the suppliers of grey fabrics who after investigation were found non-existent and bogus. This judgment has also been upheld by the Hon'ble High Court of Gujarat in the case of M/s Multiple Exports-2013(288)ELT-331 (Guj).
- 16) The Commissioner (Appeals) in earlier OIA No. RS/148/SRT-1/06 dated 30.11.2006 in the case of M/s Rado Exports, involving identical facts and issue, has rejected the party's appeal upholding the OIO of the lower authority disallowing the Cenvat credit taken on the basis of fake invoices and confirming demand of duty. The salient observation of the Ld. Commissioner (Appeals) on this point, as given below, is worth producing : "In this case, the appellant has taken the Cenvat Credit on the basis of the fake invoices which are nothing but piece of papers claimed to be invoices, without satisfying themselves regarding the duty paid nature of the goods as well as identity and

address of the dealer. As such, they have contravened the provisions of sub Rules (2) and (4) of Rule 7 of Cenvat Rules, 2002. The appellant has failed to produce any record to rebut the allegation made by the department. Therefore, the contention of the appellant cannot be accepted. The demand along with interest is upheld and penalty imposed in the contravention of the provisions of Rule 7(2) and (4) of Cenvat Credit Rules, 2002 is justifiable. The impugned Order In Appeal passed in this case by Ld. Commissioner (Appeals) is manifestly in contradiction of this case in so far as what have been held to be mere piece of papers here can not be legitimate documents to pass on duty credit to someone else, irrespective of whether the transactions were bonafide or not as also held in numerous other cases cited in later paras.

- 17) In the case of fake cenvatable invoices, the issuer did not have any right to Cenvat credit and therefore they were legally incapable of transferring any Cenvat credit to anybody irrespective of Innocence of the buyers. The said order of Commissioner (Appeals) also does not stand the test of Central Excise Credit Rules whose first and foremost condition is receipt of goods by manufacturer for availment of Cenvat credit which is not possible in such cases.
- 18) The above view is fully supported by the two decisions of Hon'ble CESTAT at Ahmedabad passed recently in case of M/s Sheela Dyg. (A Manufacturer process house) order No. A/431/WZB/Ah'bad/06 dtd. 8.11.2006 and M/s Shiv Enterprises (A dealer) order No. A/463/WZB/Ah'bad/06 dtd. 8.11.2006.
- 19) While disposing of stay application in the case of M/s Imperial Dyeing Vis CCE, Surat-1 (order No. S/210/WZB/Abad/07) Hon'ble CESTAT held that merely because the Invoices travelled to the appellants through three principal manufacturer is no ground for extending the benefit of Modvat credit to the applicants on the basis of fraudulent invoices.
- 20) There are a number of case laws including those emerging out of Hon'ble Apex Court, which support the above view. (some of them

are cited below) In case of Farida Prime Tannery V/s Commr. of Customs, Chennai reported in 2006(198)ELT 158 (Tri. Chennai) it was held that "Mere fact that appellants had no role in such fraud does not obliterate offending character of goods, which were imported by party under a license, which was fraudulently created. Applicant further relied on following case laws :

- a) M/s Golden Tools International V/S Jt. DGFT, Ludhiana, reported in 2006(199) ELT 213
- b) New India Assurance Co. Ltd. V/s Kamla & others Reported in 2001 (4) SCC 342
- c) ICI India Ltd. V/s Commr. of Customs, Calcutta reported in 2003(151) ELT 336 (Tri. Delhi)
- d) D.A. Srinivasulu V/s Commr. of Customs, Mumbai reported in 2006(202)ELT 69 (Tri. Bang.)
- e) M/s. Suraj sales Corporation V/s Commissioner of Customs, Mumbai, reported in 2002 (149) ELT 1413 (Tr. Mum.)

21) Applicant prayed that

- (i) the Order-in-Appeal No.CCESA-VAD(APP-II) SSP-106 to 115/2014-15 dated 27.03.2015 issued on 03.04.2015 passed by the Commissioner (Appeals) allowing the appeal filed by the appellant be set aside and Order-in-Original No.SRT-III/364 to 373/2014-15/R dated 11.08.2014 passed by the original adjudicating authority be restored;
- (ii) to grant the order staying payment of the rebate claim; to pass such order/orders so as to meet the ends of justice

5. Personal hearing in this case was fixed for 26.10.2021, Ms. Deepali Kamble, Advocate appeared online on behalf of the applicant and submitted that Comm(A) has correctly allowed rebate. She mentioned RA

order 327-334/2021 dated 29.09.2021 is on identical issue. She requested to dismiss department appeal.

6. The Respondent in their defense reply submitted the following cross objections:

- i. It is one of the ground of the department that the goods exported by the respondent is not duty paid nature as the Cenvat Credit availed by the them was not available, as the invoices on the basis of which they have availed credit is fake and bogus. In this connection, it is to submit that no show cause notice was issued to the Respondent for wrong availment of credit in respect of grey supplied by M/s. Iqra Tex, Sadik Textile etc. (grey suppliers in the present SCN) and thus, when credit availed by them is genuine, there is no such bar for utilization of the such credit for duty payment of export goods and thus grounds taken by the department is not correct.
- ii. Once the credit taken by the respondent is valid (as there was no show cause notice issued to the respondent), the duty paid by the exporter respondent is valid in law and same is accepted by the department and therefore legitimate rebate claim cannot be denied.
- iii. The grounds taken by the department is not correct as the Commissioner (Appeals) in his order vide para 6.15 well explained the genuineness of the export and grey supplied by the grey suppliers. The Hon'ble Commissioner (Appeals) in his findings also stated that both the verifying officers of Range level do not find any fraud or fake nature or bogus invoices relating to the rebate claims. Therefore, in absence of it, it cannot be concluded that the relevant invoices on which cenvat credit taken by the Respondent are fake or forged or bogus and export goods are cleared without payment of appropriate duty of Central Excise and cess. In view of this also, the grounds taken by the department is not correct.

- iv. The grounds taken by the department is not correct as the Range Superintendent have well verified the legality of the Cenvat Credit available to the respondent. The Commissioner (Appeals)in para 6.15 well find that the Range Superintendent after verifying all documents submitted his report. In view of this, grounds taken by the Department is not correct.
- v. It is not correct as if anything wrong done by the supplier, the respondent cannot be punished as the respondent received grey fabrics along with duty paid documents. Thus, if any investigation initiated at the end of supplier, the legitimate rebate claims of the respondent cannot be withheld under the guise of the investigation, much particularly when the goods and invoices received by the respondent are genuine. Grounds taken by the department is not correct as the rebate claims sent to the Range Superintendent is found genuine, then there is no such reason to reject or withheld claim at the end of Assistant Commissioner or Division level.
- vi. It is not correct as the Range Superintendent have verified all the duty particulars and after verification gave report to the Assistant Commissioner. Also, the department failed to establish that the investigation initiated relevant with the present rebate claims ie. to say the investigation was in respect of the invoices which are involved in the present rebate claims. Thus, the grounds taken by the department in this para is not correct and reference made by the department for investigation is irrelevant with the rebate claims.
- vii. The grounds taken by the department is not correct and irrelevant, much particularly the department failed to establish that the invoices in the rebate) claims are same and one which are involved in the investigation. Also, there is no such show cause notice issued to the respondent for wrong availment of Cenvat Credit. The above position is well explained by the

- Commissioner (Appeals) in his order vide para 6,27 In view of this also the grounds taken by the department is not correct.
- viii. it is not correct, much particularly the Cenvat Credit is to be scrutinized within the prescribed period and take all necessary action under law and rules made there under if there is any violation committed by the assessee in self-assessment, however, there is no such notice issued to the respondent in respect of the grey fabrics involved in export. In view of this, the stand of the department for withholding rebate claims is not correct.
- ix. It is not correct as the case law relied upon by the department in the case of CCE, New Delhi v. Hari Chand Shri Gopal (supra), relates to the denial of exemption notification benefit where the assessee has not followed the statutory requirements for manufacture of intermediate excisable goods and not followed Chapter X procedure of erstwhile C.E.R., 1944 and also not obtained the registration certificate, not executed the bond as provided under Chapter X, not maintained RG-16 Register prescribed for receipt of duty free inputs, etc. The said case law is not applicable to the facts of the present case. In view of this, the grounds taken by the department is not correct
- x. The grounds taken and case laws cited by the department in paras 14 to 21 are not correct much particularly the Commissioner (Appeals) in his Order-in-Appeal vide para 6.29 well explained the each and every judgments and cited latest position of law. Thus, grounds taken by the department are not correct.
- xi. In view of above, the respondent prayed to reject the appeal filed by the revenue in the interest of justice, to grant any other relief looking to the facts and circumstances of the present case, and to direct the authority to sanction and pay the rebate claims within thirty days along with interest from the date of filing of the rebate claims.

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 Commissioner (Appeals) vide impugned order have rejected the respective Order-in-Original sanctioning the rebate claims filed by the Respondents mainly on the issue discussed at para 3 supra.

9. Government observes that amongst the list of purchaser of grey fabrics who availed Cenvat Credit of Central Excise duty by showing receipt of grey fabrics from allegedly bogus units, the name of Respondent, also appeared. Therefore, it was necessary that the duty paid nature of the export goods (for which the Respondent had claimed rebate), was ascertained. Therefore, in order to verify the authenticity of the Cenvat credit availed by the Respondent, on the strength of invoices received by them from grey fabrics suppliers and the subsequent utilization of such Cenvat credit for payment of Central excise duty, on the above mentioned exports made by the Respondent, an opportunity was given to them for submission of document / records regarding the genuineness of the availment of Cenvat Credit on grey fabrics, which were subsequently used as inputs in the manufacture of exported goods covered under the subject ARE-Is. In the instant cases the Respondent had not submitted some of the documents / records proving the genuineness of the availment of Cenvat credit on grey fabrics. Therefore, the Original authority in the respective Order-in-Original observed that the duty payments and the existence of the grey manufacturer /supplier of Respondent, were of utmost important, however Respondent has not produced the relevant documents, therefore, genuineness of the Cenvat Credit availed on input used in export fabrics could not be verified due to non-submission of relevant records by the Respondent.

10. Perusal of Order-in-Original also revealed that there is nothing on record to show that the name of Respondent, was appearing in the Alert Notices issued by DGCEI or Central Excise Authorities. Government here

reproduces the text from the OIO which shows some past frauds committed by the suppliers of the applicant pertaining to the instant rebate claims :

“38. I also find that the Commissioner of Central Excise, Customs & Service Tax Surat-1, vide Order-in-Original bearing No 23/MP/2012-13 dated 18.02 2013 F No DRI/SRU/INV-03/2007 imposed penalty of Rs 5 lakh (Rupees Five Lakh) each on M/s Igra Tex, Survey No. 75. Plot No. 37, Pakiza Ind Estate, Bharimata Road, Tunki, Surat and M/s Rajshree Fabrics, 5, Navdiwala Estate O/S Saheli Jakat Naka, Vadod, Pandesara, Surat. While imposing penalty the learned Commissioner of Central Excise & Customs, Surat-I observed that the above said grey supplier firms had abetted and aided to the exporter in claiming rebate benefits knowing fully well that they have not supplied any goods whatsoever but given documents only to the party. By doing so, all of them have rendered themselves liable to penal action under Ruel 26 of Central Excise Rules, 2002 .

39. Further, find that M/s. Rachna Art Prints Pvt Ltd Surat have purchased Grey Fabrics from the supplier M/s. Sadik Textile, 90-101, Narayan Ind. Estate, Anjana Farm, Surat, the investigation of department revealed that, the Akai Fashion Ankleshawar statement dated 19/01/2006 and 11.1.2009 of Shri Mohammed Sadik Mohammed Kasim Bhorania Authorised signatory of the unit, disclosed that he was the proprietor of Sadik Textile 90-101 Narayan Industrial Estate Anjana Farm Surat: that he was running the said firm since last four years; that he was the owner of the place (factory) and had Gumastadara Licence and have purchased the grey fabrics from Mahalaxmi Trading Co Shop No 2102 Ambaji Market Ring Road Surat and from others and availed the cenvat credit on the basis of said invoices which were found fake/non exist. Further the Superintendent Central Excise Range IV Division IV Surat under whose jurisdiction the said firm falls, vide his letter No R-IV/D-IV/Annexure/Verification/2013-14 dated 30.08.2013 reported that the assessee has availed the Cenvat Credit on the basis of invoices issued by fake/bogus/non existent firms & SCN for disallowance of CENVAT CREDIT of Rs. 49,22,193/- was issued vide F.No V(Ch-54) 3-87/ADC/DEM/2008 dated 16.01.2009 and the said SCN has been adjudicated by the Additional

Commissioner Central Excise vide OIO NO 10/ADJ/ADC-PKK/D/2010 dated 7.7.2010 and disallowed the Cenvat credit of Rs. 49,22,193/-“

Thus from the above text , it is clear that the suppliers of the Respondent were involved in the frauds earlier as well. Though suppliers have allegedly committed fraud, it is necessary to establish beyond doubt that the buyer is knowingly involved in the fraud committed by the supplier which in the present case has not been established on record. Thus, the outcome of the investigation/Show cause Notices as mentioned there in the OIO, which are issued to various suppliers as well as to the Respondents, if any, is imperative for taking any further decision in the matter.

11. Government further notes that the Respondent had failed to clarify/submit the documents when the rebate claims were verified/scrutinized at divisional level again in light of Alert Circular & as per direction given by the Additional Commissioner(Prev.)Central Excise & Customs, Surat-I vide letter F.No. IV/16-HPIU-VII/39/2008 dtd. 13/19.02.2009 considering a huge revenue involvement running into crores of rupees due to issue of fake/bogus excise invoices. The Respondent argued that the grounds taken by the department is not correct as the Range Superintendent have well verified the legality of the Cenvat Credit available to the respondent and the Commissioner (Appeals) in para 6.15 well find that the Range Superintendent after verifying all documents submitted his report. In this regards Government observes that adjudicating authority is not bound by the duty verification report submitted by the Range Superintendent if he thinks it would not suffice for sanctioning rebate claims and can do further verification to satisfy himself before sanctioning the rebate claims in order to protect the revenue as Section 11-B of Central Excise Act, 1944 empowers only to the Assistant Commissioner of Central Excise & Customs to decide the Refund/Rebate claims filed by the assessee falls within the jurisdiction of Divisional office.

12. Government observes that the benefit of rebate claim cannot be denied merely on the basis of surmises and conjecture. GOI vide its Order No.

501/2009-CX, dated 29-12-2009, in F. No. 195/88/2007-RA-CX, in the case of M/s Vikram International observed that

“.....there is no doubt that the goods have not been exported out of India in terms of Rule 18 of Central Excise Rules, 2002 read with procedure prescribed under Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 and under certification of Customs authorities at the port of export. There is no observation to the contrary either in the order of rebate sanctioning authority or order of Commissioner (Appeals). It is also observed that goods were supplied to the applicant under cover of duty paying Central Excise documents and in the invoices issued the duty amount paid by manufacturer has been mentioned and for the goods supplied the applicant has made payment of total amount inclusive of Central Excise Duty. This position is not disputed. The only statutory requirement of duty paid character by way of certification by Supdt. Central Excise in triplicate copy of ARE-1 in terms of Notification No. 40/2001-C.E. (N.T.), dated 26-6-01 read with paras 8.3 and 8.4 of Central Excise Manual is also not in dispute. In the order-in-original and order-in-appeal, there is no charge or allegation that the transaction between exporter/applicant and the manufacturer/supplier was not at arms length or not in the nature of a transaction in the normal course of business or non-bona fide and influenced by any extra commercial consideration. In fact there is nothing on record to establish, much less point out even prima facie any role direct or indirect, connivance or intention of the applicant in the act of procurement of inputs by supplier manufacturer on basis of bogus invoices.....”

The applicant/exporter who has bonafidely purchased and exported the goods after payment of entire amount inclusive of duty per se cannot be also penalized by way of denying his claim for rebate if otherwise it is in order, especially when no evidence has been laid to show any mutuality of interest financial control or any flow-back of funds between the applicant exporter and the manufacturer supplier of goods.....”

A similar view has also been taken by GOI in its Order No. 351/2010-CX, dated 26.02.2010 in F. No. 195/130/2007-RA-CX in respect of M/s Sheetal Exports.

13. In view of discussions and findings elaborated above, Government is of the considered opinion that a detailed verification into the allegations is

required to be carried out. This verification is also necessary to establish the genuineness or otherwise of the Cenvat credit availed and subsequently utilized by the Respondent for payment of duty towards the above exports.

14. In view of above circumstances, Government sets aside the Order-in-Appeal No. CCESA-VAD(APP-II) SSP-106 to 115/2014-15 dated 27.03.2015 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara, Appeals-II, Surat and the case is remanded back to the original authority for denovo adjudication for a limited purpose of verification of duty payment in all these rebate claims on the basis of documentary evidence available as well as outcome of the investigations/show cause notices as discussed supra and to pass a well-reasoned order after following the principles of natural justice. The Respondent is also directed to submit all the documents relating to availment of Cenvat credit, concerned ARE-1s along with copies of Bill of Ladings, BRCs for verification and any other documents evidencing payment of duty. The original authority will complete the requisite verification expeditiously and pass a speaking order within eight weeks of receipt of this Order.

15. The Revision application is disposed off in above terms.


(SHRAWAN KUMAR)

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

ORDER No. 636/2022-CX (WZ)/ASRA/Mumbai DATED 09.06.2022

To,

1. M/s Rachna Art Prints Pvt Ltd.,
234/1-244/B, GIDC, Pandesara,
Surat-394 221.
2. The Pr. Commissioner of CGST, New Central Excise Building, Chowk
Bazar, Surat - 395 001.

Copy to:

1. Commissioner(Appeal-II), Central Excise, Customs, Service Tax, Vadodara, Appeals-II, 4th Floor, Central Excise Building, Opp. Gandhi Baugh, Chowk Bazar, Surat-359001.
2. The Assistant Commissioner, Central Excise and Customs, Division-III, Surat-I, 1st Floor, Vivekanand Chambers, Near Rajeshree Hall, Navsari Bazar Surat-I.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file