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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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/107 & 108/15-RA /3800

Date of Issue: 15.09.2022

ORDER NO. 861-862/2022-CX(WZ) /ASRA/MUMBAI DATED 13.09.2022  
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 : M/s Calison Fibres Pvt. Limited,  
Laxmi Industrial Estate, Plot No.12 to 15,  
Survey No.26/227/284, Opp. Baroda Rayon Corporation,  
Udhna, Surat.

Respondent : Commissioner of Central Excise,  
Raigad Commissionerate, Kendriya Utpad Shulk Bhavan,  
Plot No.1, Sector 17, Khandeshwar,  
Navi Mumbai - 410 206.

Subject : Revision Applications filed under Section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
bearing Nos. CD/73/RGD/2015 and CD/80/RGD/2015,  
both dated 02.01.2015 passed by the Commissioner of  
Central Excise (Appeals), Mumbai Zone - II.

**ORDER**

The subject Revision Applications have been filed by M/s Calison Fibres Pvt. Limited, Surat (here-in-after referred to as 'the applicant') against the two impugned Orders-in-Appeal, both dated 02.01.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone - II. The said Orders-in-Appeal disposed of appeals filed by the applicant against the Orders-in-Original passed by the Additional Commissioner, Central Excise, Raigad. The details of the same are as under:-

| <b>Sl. No.</b> | <b>Date of Show Cause Notice</b> | <b>Order-in-Original No. &amp; Date</b>  | <b>Order-in-Appeal No. &amp; Date</b> |
|----------------|----------------------------------|--|---------------------------------------|
| 1              | 09.05.2011                       | Raigad/ADC/37(SJ)13-14<br>dt. 30.09.2013 | CD/73/RGD/2015 dated<br>02.01.2015    |
| 2              | 30.11.2010                       | Raigad/ADC/38(SJ)13-14<br>dt. 30.09.2013 | CD/80/RGD/2015 dated<br>02.01.2015    |

2. Brief facts of the case are that the applicant was engaged in the processing of fabrics and had local and export clearances, in addition to which they also exported fabrics processed by other units as a merchant exporter. They availed Cenvat credit on their inputs and claimed rebate of the duty paid on goods cleared for export. They also claimed rebate of the duty paid by their suppliers on goods which were finally exported by them as a merchant exporter.

3. The applicant was issued two Show Cause Notices dated 09.05.2011 and 30.11.2010 seeking to recover the rebate sanctioned to them on two occasions. The said Show Cause Notices were a fallout of a case booked by the Directorate General of Central Excise Intelligence (DGCEI) against a syndicate which fabricated invoices and passed on Cenvat credit without the actual manufacture or supply of grey fabrics. The Show Cause Notice dated 09.05.2011 sought to recover the rebate claimed by the applicant as a merchant exporter, on goods which were purchased by them from M/s Gujarat Polyfilm Pvt. Limited (GPPL), a processor, as the investigation by the DGCEI had revealed that GPPL had availed Cenvat credit on the basis of

invoices issued by firms who merely provided such fake/bogus invoices without actually supplying any material or payment of duty; and such fraudulently availed Cenvat credit was used by GPPL to pay duty, the rebate of which was claimed by the applicant. The said Show Cause Notice was decided by the original authority vide the Order-in-Original dated 30.09.2013 mentioned at serial number one in the Table above, wherein the demand of Rs.24,08,796/- was confirmed, Rs.10,00,000/- paid by the applicant was appropriated and penalty equivalent to the amount confirmed was imposed under Section 11AC of the Central Excise Act, 1944. The appeal preferred by the applicant against the said Order-in-Original before the Commissioner (Appeals) was rejected vide Order-in-Appeal dated 02.01.2015. In the case of the second Show Cause Notice dated 30.09.2013, the issue differed to the extent that the applicant themselves had indicated purchases of grey fabrics from such fraudulent firms and availed Cenvat credit on the basis of fake/bogus invoices supplied by them, which the applicant subsequently used to pay duty, the rebate of which was claimed by them. In this case too, the original authority vide Order-in-Original dated 30.09.2015, mentioned at serial number two in the Table above, found that rebate of duty claimed was never paid in the first place and hence confirmed the demand of Rs.33,46,632/-, rejected the rebate claims for Rs.2,97,445/- which were pending disposal and imposed penalty of Rs.36,44,077/- under Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals) vide Order-in-Appeal dated 02.01.2015 rejected the appeal preferred by the applicant against this Order-in-Original too. Government notes that the issue involved in both the cases stem from the same set of facts and are based on evidences which are common, gathered during the course of the same investigation carried out by the DGCEI. In light of the same Government takes up both the subject Revision Applications for being decided together.

4. The applicant, aggrieved by the above mentioned Orders-in-Appeal both dated 02.01.2015, have filed the subject Revision Applications on the following grounds:-

- (A) Submission in respect of Order-in-Appeal No.CD/73/RGD/2015 dated 02.01.2015 :-

(i) The Commissioner Appeals erred in rejecting the appeal as they were a merchant exporter and the buyer of finished duty paid goods which were exported; that the rebate claims were sanctioned and paid during May, June, July 2007 and hence the demand made under show cause notice dated 09.05.2011 invoking extended period in respect of such claims was not sustainable in law as they were time barred; that hence the order of the Commissioner Appeals was not sustainable on merits and law;

(ii) The Commissioner (Appeals) failed to appreciate that the buyer of the grey fabrics was Gujarat Polyfilms Pvt. Ltd. and not the merchant exporter who had purchased finished fabrics and exported in accordance with law and therefore the ratio of Shree Shyam International and Gujarat High Court's judgment in the case of Roman Overseas was squarely applicable on merits of the case and therefore the order of the Commissioner (Appeals) rejecting the appeal altogether on different grounds relying upon inapplicable ratio of judgments was not sustainable in law;

(iii) The Commissioner (Appeals) had failed to appreciate that in the show cause notice as well in the adjudication order, it was clearly mentioned that the appellant was a merchant exporter and had purchased finished goods for export on payment of the value of the goods including excise duty and therefore there was no cause to recover the rebate amount sanctioned and paid subsequently invoking extended period and hence the said orders passed by the lower authorities were bad in law and was required to be set aside in the interest of justice;

(iv) The Commissioner (Appeals) failed to appreciate that the transactions between them and seller of the goods M/s. Gujarat Polyfilms Pvt. Ltd. were at arms length and that all financial transactions of payment of the goods were genuine and the goods under respective invoices and ARE-1s were exported and remittance was received and therefore there was no cause to recover the rebate amount sanctioned and paid on merits and therefore the orders passed by the lower authorities were bad in law and was required to be set aside in the interest of justice; the Commissioner (Appeals) had erred

in not giving any finding on the submissions made on the point of limitation as well as merits of the case and therefore the said order is not sustainable in law;

(v) The Commissioner (Appeals) had failed to appreciate that rebate claims filed were duly scrutinized in terms of Chapter 8 of CBEC's Manual and thereafter the rebate claims were sanctioned and paid and therefore the show cause notice dated 09.05.2011 invoking extended period was time barred; that the reliance placed in the case of Tata Johnson Control Automotive Ltd. reported in 2012 (275) ELT 492 (GOI) was not considered and no finding were given on the said judgment, hence, the order was not sustainable in law;

(vi) The Commissioner (Appeals) failed to appreciate that the provisions required under Rule 18 of Central Excise Rules, 2002 and Notification No.19/2004 CE(NT) dated 06.09.2004 were strictly complied with and as a result the rebate claims were sanctioned and paid after scrutinizing all the documents in terms of Chapter 8 of CBEC's Manual and Para 8.4 of the said Manual; and that the rebate claims were sanctioned and paid after being duly satisfied regarding payment of duty and export of goods under respective invoices and ARE-1 and hence the finding of the adjudicating authority contrary to this for recovery of rebate claims was not sustainable in law and hit by time bar;

(vii) The Commissioner (Appeals) had failed to appreciate that evidences prevail and not the assumptions/presumptions as held by the Tribunal in the case of Raj Petroleum Products reported in 2005 (192) ELT 806 (Tri.-Mumbai); that in the present case, documentary evidences in the form of statutory records of processors and grey suppliers and export documents were to be considered and not the presumption and hence the finding of the adjudicating authority contrary to evidences on record in respect of the rebate sanctioned and paid was to be discarded and the said order was required to be set aside;

(viii) The Commissioner (Appeals) had failed to appreciate that the provisions of Section 11AC of the Act was not applicable to merchant exporter who was outside the scope of Section 11AC of the Act and therefore imposition of penalty was not sustainable in law; that the Commissioner (Appeals) had failed to appreciate that the merchant exporter was the buyer of processed fabrics on payment of full value including duty element which was not challenged and the payment has been made for the purchase of the goods exported and therefore the provisions of Section 11AC of the Act would not be attracted on merchant exporter; that hence the action of the lower authorities imposing and upholding penalty was not correct in law;

(ix) The Commissioner (Appeals) had erred in not appreciating the judgment cited in the case of Prayagraj Dyeing and Printing Mills Pvt. Ltd. wherein Hon'ble High Court of Gujarat had held that extended period was not applicable when the person was not party to fraud and the invoices were otherwise genuine; that both the criteria were met with in the facts of the present case in their favor and hence the orders of the lower authorities without giving any finding on the submissions made and judgments cited, was a miscarriage of justice and were required to be set aside in the interest of justice; that the submissions reflected at para two were not actually submitted and hence the entire findings based on the said para two for rejection of appeal was not sustainable in law;

(x) The Commissioner (Appeals) had erred in relying upon judgments in the case of Sheetal Exports, Jhawar international, Rainbow silks, Sheela Dyeing and Printing P. Ltd., Muple Exports and Diwan Brother of Gujarat High Court as the same was in relation to the exporters who had supplied grey fabrics for processing and grey suppliers were found to be non-existent and not in respect of merchant exporters who had purchased finished duty goods exported and received rebate claims in accordance with law and therefore said order of the Commissioner Appeals was without considering facts;

(xi) The Commissioner (Appeals) had erred on relying upon the judgment the case Sheetal Exports wherein rebate claims were rejected by the original

authority after verifying documents which were not found genuine whereas in their case duty paid nature the goods were verified in terms of para 8.4 of Chapter 8 of CBEC manual and rebate claims were sanctioned and paid and there was no suppression and therefore the judgment cited by Commissioner (Appeals) in the case Sheetal Exports and Jhawar International is not applicable to the case of appellant and therefore the said order is not maintainable in law;

(xii) The Commissioner (Appeals) had wrongly relied upon judgment of Bombay High Court in the case of Rainbow Silk wherein the issue involved was accumulation of Cenvat Credit on the basis of fraudulent documents of bogus firms and credit was utilized to pay duty and hence was not applicable to the instant case;

(xiii) The Commissioner (Appeals) failed to appreciate that while deciding the case of Prayagraj Dyeing the demand beyond the period of one year was held as time barred and the credit taken beyond the period on one year stood regularized and admissible in law and therefore Sheela Dyeing and Printing Mills was not applicable to the facts of the instant case as the show cause notice dated 9.05.2011 for the recovery of credit beyond the period of one year was time barred; hence the conclusion of Commissioner (Appeals) without giving any findings on several points raised was not correct in law and therefore the said order was required to be set aside;

(xiv) The Commissioner (Appeals) had wrongly relied upon the judgment in the case of multiple exports and Diwan Brothers wherein the rebate claims were rejected at initial stage whereas in their case rebate claims were sanctioned and paid long back in May, June, July, 2007 after verifying the duty paid nature of goods exported and subsequently show cause notice dated 09.05.2011 was issued invoking extended period which was not permissible in law being time barred and therefore all judgments cited by the Commissioner (Appeals) were not applicable to the peculiar facts of their and hence the said order was not valid in law;

(xv) The Commissioner (Appeals) had erred in upholding equal amount of penalty imposed by the adjudicating authority as the demand was time barred and issue involved being interpretation of law, penalty was not imposable and even otherwise no option of penalty was given and hence the said orders were not sustainable in law;

(B) Submission in respect of Order-in-Appeal No.CD/80/RGD/2015 dated 02.01.2015 :-

(i) The Commissioner (Appeals) had rejected their appeal relying upon various judgments without appreciating the evidences / submissions on record and without giving any findings thereon and was hence illegal and against the provisions of law and not maintainable in law;

(ii) The Commissioner (Appeals) had failed to appreciate and give any finding on the material submissions on the point of law that the rebate claims were sanctioned and paid after due verification of duty paid nature of goods and in terms of chapter 8 of CBEC manual; that rebate claims were sanctioned and paid during the period 16.04.2007 to July 2008 whereas show cause notice for recovery of erroneous rebate was issued on 30.11.2010 invoking extended period which is not valid in law being time barred; that they had relied upon the decision of the Revision Authority in the case of Tata Johnson Automotive Limited reported at 2012(275)EL.T. 492 (GOI); that the Commissioner (Appeals) had not given any findings on the point of law and issue decided by the Revision Authority which was squarely applicable to the facts of the case of the appellant and therefore the said order is not sustainable in law;

(iii) The Commissioner (Appeals) had failed to appreciate that show cause notice dated 30.11.2010 was issued to them for the recovery of Cenvat Credit involved in the rebate claims and was confirmed by the adjudicating authority vide Oder dated 29.07.2011 against which appeal had been preferred on merits and law considering Gujarat High Court judgment in the case of Prayagraj Dyeing wherein the invoices issued by registered dealer etc. were declared genuine and it was held that there is marked distinction between a forged document and a document issued by practicing fraud and



that this document was held genuine in law; that the documents were not fraudulent documents and therefore the action of Adjudicating authority on other hand confirming demand for recovery of erroneous rebate claims was not correct in law and consequently the order of Commissioner (Appeals) upholding the order of adjudicating authority and rejecting their appeal is error of law and was required to be set aside;

(iv) The Commissioner (Appeals) had erred in not giving any finding on the point of law that rebate sanctioning authority had no power to appropriate any amount from rebate claims sanctioned as the said authority vide order no.2300 dated 04.09.2008 had appropriated Rs.18,23,790 which was in terms of show cause notice dated 30.11.2010; thus, the confirmation of demand is duplication for recovery of amount sanctioned and paid and therefore the said order was not maintainable in law;

(v) The Commissioner (Appeals) had erred in not considering the facts that on one hand notice for recovery of duty credit on processors have been issued vide show cause notice dated 30.11.2010 which was time barred in terms of Gujarat High Court Judgment in the case of Prayagraj Dyeing and on the other hand notice was issued for recovery of the same amount as erroneous rebate by notice dated 30.11.2010 which was also time barred as the rebate claims were sanctioned and paid after scrutinizing and verifying duty paid nature of goods in terms of chapter 8 of CBEC manual and therefore on both the points, the notices were not sustainable; that no findings have been given by the Commissioner (Appeals) and therefore the said order was required to be set aside;

(vi) The Commissioner (Appeals) had failed to appreciate that when the rebate claims orders are sanctioned and paid and not reopened within a year then it becomes absolute; that in this case no appeals have been filed against said orders and therefore at subsequent stage suppression of facts etc. cannot be claimed as a matter of right by Revenue and therefore considering point of time barred and merits, the order of the Commissioner (Appeals) was not sustainable in law;

(vii) The Commissioner (Appeals) had erred on relying upon the judgment in the case of Sheetal Exports wherein the rebate claims were rejected by the original authority after verifying documents which were not found genuine whereas in the present case, duty paid nature of the goods were verified in terms of para 8.4 of chapter 8 of CBEC manual and rebate claims were sanctioned and paid and therefore there was no suppression of facts etc and hence the said judgments cited by Commissioner (Appeals) in the case of Sheetal Exports and Jhawar International were not applicable to their case;

(viii) The Commissioner (Appeals) had wrongly relied upon judgment of Bombay High Court in the case of Rainbow Silk wherein the issue involved was accumulation of Cenvat Credit on the basis of fraudulent documents of bogus firms and credit was utilized to pay duty and hence was not applicable to the instant case;

(ix) The Commissioner (Appeals) failed to appreciate that while deciding the case of Prayagraj Dyeing the demand beyond the period of one year was held as time barred and the credit taken beyond the period on one year stood regularized and admissible in law and therefore Sheela Dyeing and Printing Mills was not applicable to the facts of the instant case as the show cause notice dated 30.11.2010 for the recovery of credit beyond the period of one year was time barred; hence the conclusion of Commissioner (Appeals) without giving any findings on several points raised was not correct in law and therefore the said order was required to be set aside;

(x) The Commissioner (Appeals) had wrongly relied upon the judgment in the case of multiple exports and Diwan Brothers wherein the rebate claims were rejected at initial stage whereas in their case rebate claims were sanctioned and paid long back in May, June, July, 2007 after verifying the duty paid nature of goods exported and subsequently show cause notice dated 30.11.2010 was issued invoking extended period which was not permissible in law being time barred and therefore all judgments cited by the Commissioner (Appeals) were not applicable to the peculiar facts of their and hence the said order was not valid in law; that the Commissioner (Appeals) had erred in not considering several grounds raised in the appeal memo and

written submissions dated 02.12.2014 and hence the order of the Commissioner (Appeals) which did not give any findings on their submissions was not sustainable in law;

(xi) The Commissioner (Appeals) had erred in upholding equal amount of penalty imposed by the adjudicating authority as the demand was time barred and issue involved being interpretation of law, penalty was not imposable and even otherwise no option of penalty was given and hence the said orders were not sustainable in law; that in view of the above the operation and implementation of the order of the Commissioner (Appeals) was required to be stayed till the final disposal of appeals;

(xii) The present appeals had been filed in terms of Board circular no.993/17/2014-CX dated 5-1-2015 under which the appellant was not required to deposit any amount as precondition for filing revision application before revision authority;

In view of the above submissions, the applicant has made a similar prayer in both the cases to the extent that the demands raised be declared as time barred; to stay the operation of the Commissioner (Appeals) till the disposal of their applications and finally allow their subject Applications with consequential relief.

5. Personal hearing in both the above cases was held on 22.03.2022. Shri Raj Vyas, Advocate appeared online on behalf of the applicant. He reiterated their earlier submissions and submitted that the Show Cause Notices had invoked extended period without there being any ground. He submitted that goods have been exported and they were correctly sanctioned rebate in the beginning. He requested that their Revisions Applications be allowed.

6. Government has carefully gone through the relevant records, the written and oral submissions and also perused the Orders-in-Original and the impugned Orders-in-Appeal.

7. Government finds that the Show Cause Notice dated 30.11.2010 sought to recover the rebate already sanctioned as well as reject the claims which were pending disposal whereas the Show Cause Notice dated 09.05.2011 sought to recover rebate claims already sanctioned and appropriate the amount already paid back by the applicant. Government finds that the events which led to the above Show Cause Notices are the same and are based on an investigation carried out by the DGCEI wherein it exposed a syndicate consisting of several entities who issued fake/bogus Central Excise Invoices indicating payment of duty without any physical sale or purchase of fabrics or actual payment of Central Excise duty.

8. Government has examined the Show Cause Notices, both issued by the Deputy/Assistant Director, DGCEI, wherein the entire investigation carried out by the DGCEI has been elaborated and the modus operandi of the syndicate exposed. Government finds that several firms viz. Parth Impex, Balaji Textile, Shree Sai Textiles, Madi Fabrics, Iqra Tex etc. were created by the said syndicate; and all these firms obtained registration as 'Dealers' with the Central Excise Department. These firms issued Central Excise invoices indicating payment of Central Excise duty on grey fabrics to several other firms as well as amongst themselves, without actual supply of goods or payment of duty in the first place. These invoices were used either by 'Dealers' or 'Merchant exporters' or 'Manufacturer exporters' to avail Cenvat credit. The Cenvat Credit so availed was used to pay duty when the goods were indicated as sold to a processor/exporter. The role of the applicant has been laid bare by the investigation carried out. In the first instance, the applicant has indicated purchases from such 'Dealers' who issued such fake/bogus invoices without supply of grey fabrics or payment of duty and thereafter claimed to have exported the resultant final product on payment of duty paid by using the Cenvat credit which was availed on

the strength of such fake/bogus invoices issued by the fraudulent entities. The Show Cause Notice dated 30.11.2010 was issued to recover the rebate of Central Excise duty claimed by the applicant and also reject the pending rebate claims on such exports. Further, the applicant also had, in the capacity of a merchant exporter, claimed rebate of duty paid by a processor viz. M/s GPPL on the goods purportedly purchased by them from the said processor and exported thereafter. Investigations carried out reveal that M/s GPPL had indicated purchases from the fraudulent 'Dealers' listed above and had availed Cenvat credit on the strength of such fake/bogus Central Excise invoices issued by the said 'Dealers' which in turn was used by them to pay duty on the goods shown as sold to the applicant and the applicant finally claimed rebate of such duty claimed to have been paid by M/s GPPL. The Show Cause Notice dated 09.05.2011 was issued to recover such rebate claimed by the applicant.

9. Government has examined the evidences gathered during the investigation. Statements of various persons who perpetuated the fraud were recorded and they have admitted that the chain of transactions, beginning with the fraudulent 'Dealers', who issued the bogus/fake invoices and leading to the applicant, were only paper transactions and that in these cases neither were any goods were supplied nor any duty paid. The transport documents were either non-existent or were found to be forged. The transactions between these fraudulent firms indicate that the duty indicated as paid in the bogus/fake invoices was finally encashed when the rebate of the same was claimed, in the present case by the applicant. The banking transactions examined during the investigation indicate that the all parties involved were beneficiaries to the fraud. The fraudulent dealers and M/s GPPL were found to have obtained registrations on the strength of bogus/fake/forged lease agreements and the premises were found to be either vacant or residential premises or occupied by other units. Investigations also indicated that the payment made by the applicant to such entities was routed back to them through shroffs/cheque discounting agents.

10. Government finds that the Director of the applicant firm has admitted that they neither had any system of physical verification of the goods supplied by such entities nor could they co-relate the invoices and the grey fabrics covered by it. In one case, on being confronted with the statement of the others involved in the said racket, where the applicant had shown purchases of grey fabrics from one of such fraudulent entity, the Director has admitted that the said firm could not have existed and hence could not have manufactured any grey fabrics. Further, Government finds that the Director of M/s GPPL in his statement before the Central Excise authorities, when confronted with the statements and other evidence collected during the investigation, has admitted that the firms, mentioned above, had not paid Central Excise duty on the grey fabrics purportedly supplied to them. Government notes that the applicant had claimed rebate of the duty supposedly paid on the final products alleged to have been manufactured out of such grey fabrics.

11. Government finds that the investigation carried out has placed on record irrefutable evidence to indicate that the applicant along with others hatched a conspiracy to defraud the Government exchequer; they orchestrated a fraud by fabricating fake/bogus invoices indicating payment of Central Excise duty, which, through series of paper transactions reached the applicant who then availed Cenvat credit of duty which was never paid and proceeded to claim rebate of the same. Government finds that the applicant played a vital role in the entire fraud as it was them who finally encashed the duty shown to have been paid by the fake/bogus invoices. Government finds the applicant to be guilty on several counts; they have shown purchases from non-existent entities; they have shown purchases from GPPL without receiving any material from them and have availed Cenvat credit on the strength of invoices supplied from GPPL; the applicant cannot deny their complicity in the creation of such fake paper transactions and fabrication of transport documents. Government finds that the applicant played an integral part in this fraud which was perpetuated with

the sole intention to avail/encash the Cenvat credit on the strength of bogus/fake invoices fabricated by the syndicate. Government finds that it would be naïve to accept the contention of the applicant that they were unaware of the true nature of the duty payment indicated in the Central Excise invoices provided by GPPL and the other entities on which they availed Cenvat credit. Government finds that the investigation, details of which has been discussed above, clearly indicate that the applicant has colluded with the others in the syndicate with the intent to defraud the Government and in the process has suppressed facts and filed rebate claims by willfully misstating that proper duty was paid on the exported goods. In view of the above, Government finds that the applicant had fraudulently availed rebate in the subject case and such amounts claimed by them need to be recovered and the demands raised by the Show Cause Notices seeking to recover such rebate deserves to be confirmed and accordingly holds so.

12. Government finds that the applicant has sought to place reliance on judgments of various Courts wherein it was found that the exporter who had claimed the rebate was neither a part of the racket nor was aware of the fraud perpetuated by the entities down-stream. The facts are different in the present case, as the investigation carried out by the Department clearly proves that the applicant was not only aware of the fraud being perpetuated but also played a vital role in the same. Government finds that the Commissioner (Appeals) has correctly upon the decision of the Revision Authority, GOI in the case of M/s Sheetal Exports [2011 (271) ELT 461 (GOI)] and M/s Jhawar International [2012 (281) ELT 460 (GOI)] as in both these cases it was held that the exporter was not eligible to the rebate claimed as the transactions between them and their suppliers were found to not bonafide as the suppliers were found to be fake and bogus. Further, Government finds that the Commissioner (Appeals) has correctly relied upon the decisions of the High Courts in the following cases, as the facts of these cases are similar to the present case:-

- UOI vs Rainbow Silks [2011(274) ELT 510 (BOM)]

- Sheela Dyeing and Printing Mills [2008 (232) ELT 408 (GUJ)]
- Multiple Exports [2013 (288) ELT 331 (GUJ HC)]
- Diwan Brothers 2014 (309) ELT 244 (GUJ)

Government finds that in all these cases, the Hon'ble High Courts have held that that exporter was not entitled to rebate unless it was proved that the input supplier had paid duty on the very goods which were supplied by them. Government finds that in present case the evidence presented by the investigation in the Show Cause Notices make it abundantly clear that no Central Excise duty was paid on the inputs/final products exported by the applicant and they would hence not be eligible to claim rebate on such exports.

13. Government notes that the applicant has claimed that the Show Cause Notices had erroneously invoked the extended period and were hence time barred. Government notes that the investigation, details of which has been discussed above, clearly indicate that the applicant has colluded with the others with the intent to defraud the Government and in the process has suppressed facts and has willfully misstated that duty was paid on the exports. Government finds that the investigation has established the complicity of the applicant in the entire fraud beyond doubt. Thus, Government finds that all ingredients necessary for invoking the extended period under Section 11A of the Central Excise Act, 1944 exists in the present case. In light of the same, Government rejects the submission of the applicant on this count. Further, the applicant has contested the action of the original authority wherein the amount paid by the applicant was appropriated towards the amount found recoverable from them. Government finds that this amount was paid by them during the course of investigations when they were confronted with evidence to indicate that they had availed rebate through fraudulent means and hence Government does not find any fault with the decision of the original authority to appropriate such amounts towards the amount found recoverable from the applicant.



14. Further, Government finds that the applicant has submitted that they, in the capacity of a merchant exporter, are outside the scope of Section 11AC of Central Excise Act, 1944 and hence the imposition of penalty on them was not sustainable. Government finds that this is an incorrect interpretation of the said provision, as Section 11AC of the Central Excise Act, 1944 provides that the person who is liable to pay duty as determined under Section 11A shall also be liable to pay penalty equal to the duty so determined. In this case the applicant has been found to be liable to pay the rebate fraudulently claimed by them and hence the imposition of penalty on them under Section 11AC of the Central Excise Act, 1944 is proper and legal.

15. Having held so, Government finds that the original authority vide Order-in-Original No. Raigad/ADC/38 (SJ) 13-14 dated 30.11.2013 has in addition to confirming the demand of Rs.33,46,632/-, also rejected a pending rebate claim of Rs.2,97,445/- with a rider that in case the said claim was sanctioned the said amount would also recoverable from the applicant. Further, the Adjudicating Authority has imposed a penalty of Rs.36,44,077/- under Section 11AC of the Central Excise Act, 1944; this Order has been upheld by the Commissioner (Appeals). Government finds that in this case if the pending claim was not sanctioned and disbursed to the applicant, they would not be liable to penalty under Section 11AC of the Central Excise Act, 1944 with respect to such pending rebate claim. Thus, Government finds that in the event of the rebate claim not having been sanctioned the penalty under Section 11AC of the Central Excise Act, 1944 would stand reduced to Rs.33,46,632/- and accordingly holds so. However, if the said rebate claim amounting to Rs.2,97,445/- was sanctioned and disbursed to the applicant then there would be no change in the quantum of penalty imposed under Section 11AC of the Central Excise Act, 1944 by the original authority by the above referred Order-in-Original.

16. In view of the above, Government does not find any infirmity in the Order-in-Appeal No. CD/73/RGD/2015 dated 02.01.2015 and upholds the

same. As regards the Order-in-Appeal No. CD/80/RGD/2015 dated 02.01.2015, the same stands modified to the extent mentioned at para 15 above, with respect to the quantum of penalty imposed on the applicant.

17. The subject Revision Applications are disposed of in the above terms.

*Shrawan*  
13/9/22

(SHRAWAN KUMAR)

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

ORDER No. ~~861-862~~ 2022-CX (WZ) /ASRA/Mumbai dated 13.09.2022

To,

M/s Calison Fibres Pvt. Limited,  
Laxmi Industrial Estate, Plot No.12 to 15,  
Survey No.26/227/284, Opp. Baroda Rayon Corporation,  
Udhna, Surat.

Copy to:

1. Commissioner of Central Excise & CGST, Raigad Commissionerate, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector 17, Khandeshwar, Navi Mumbai – 410 206.
2. The Commissioner of Central Excise, (Appeals), Mumbai Zone – II, 3<sup>rd</sup> floor, Utpad Shulk Bhavan, Plot no.C-24, Sector E, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.
3. Sr. P.S. to AS (RA), Mumbai.
4. Sr. P.S. to AS (RA), Mumbai.