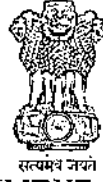


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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
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8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No.195/413/13-RA / 4060

Date of Issue: 22.09.2022

ORDER NO. 266 /2022-CX (WZ)/ASRA/MUMBAI DATED 19.09.2022  
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. Sheetal Exports

Respondent : Commissioner, Central Excise, Mumbai-I

Subject : Revision Application filed, under Section 35EE of the  
Central Excise Act, 1944 against the Order-in-Appeal No.  
BR(379)MI/2012 dated 05.11.2012 passed by the  
Commissioner (Appeals), Central Excise, Mumbai Zone-I.

## ORDER

This Revision Application is filed by the M/s. Sheetal Exports, 411, Turning Point Complex, Ghod Dod Road, Surat - 395 001 (hereinafter referred to as "the Applicant") against the Order-in-Appeal (OIA) No. BR(379)MI/2012 dated 05.11.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

2.1 Brief facts of the case are that the applicant had filed eight rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 29.06.2004 for goods exported from Mumbai port as detailed hereunder:

S.No.	R.C.No.	R.C. date	ARE-1 No.	ARE-1 Dt.	Amount
1	1561	05.05.04	891	18.03.04	73063
2	3449	28.10.04	21	07.06.04	66100
3	3450	28.10.04	58	18.04.04	431209
4	3451	28.10.04	60	18.04.04	431209
5	3452	28.10.04	61	18.04.04	308006
6	3453	28.10.04	111	16.05.04	484559
7	3455	28.10.04	59	18.04.04	431209
8	3454	28.10.04	271	09.08.04	319377

Total Rs. 25,44,732/-

2.2 The claims were rejected by the rebate sanctioning authority vide Order-in-Original (OIO) No. 220/R/06 dated 28.03.2006 on the grounds that the applicant had failed to submit duty payment certificate in tamper proof sealed envelope, as required under aforesaid Notification. Aggrieved, the applicant filed an appeal. However, the Commissioner (Appeals) upheld the OIO and rejected the appeal vide the impugned OIA.

3. Hence, the applicant has filed the impugned Revision Application mainly on the grounds that:

- a) The finding of the Commissioner (Appeals) that there was delay of 1443 days and the Commissioner (Appeals) was not empowered to condone delay for more than thirty days is not applicable to the case as the applicant was communicated order-in-original no. 220/R/06 dated 28.05.2006 on 26.03.2010 and the applicant preferred appeal on 26.04.2010 which is within prescribed time limit of sixty days. Thus, the finding of the Commissioner (Appeals) for rejection of rebate claims in terms of Section 35 is not sustainable in law.
- b) The Commissioner (Appeals) has failed to appreciate that no cross-objection has been filed by the Revenue after filing of the appeal on 26.04.2010 and also not represented by Revenue during the hearing fixed on 28.08.2012, 24.09.2012 & 18.10.2012 and therefore there is no cause to come to the conclusion that there was any delay in filing appeal from the date of receipt of the order. Thus, the order passed by the Commissioner (Appeals) without any concrete corroborative evidence that the said order was communicated prior to 26.03.2010, there is no reason for any presumption as regards to late filing of appeal beyond maximum prescribed time limit of ninety days. Thus, the order of Commissioner (Appeals) rejecting the appeal on limitation is not sustainable in law.
- c) All the evidences as regards to filing of rebate claims are on record of adjudicating authority and Commissioner (Appeals) to show that in connection with ARE-1 Nos. 891 dated 18.03.2004 and 21 dated 07.06.2004, the applicant is a manufacturer-exporter holding Central-Excise Registration and there is no dispute regarding export of the goods and there is no show cause notice issued to the applicant as regards to denial of any credit for the goods exported as manufacturer exporter. Further, there is clear finding of the adjudicating authority that the goods have been actually exported as evident from the original and duplicate

copy of ARE-I and shipping bill certified by the Customs Officer and the duty payment certificates were submitted. In view of this, there is no cause to deny the rebate claims for the duty paid goods exported. Thus, the finding of the lower authorities for rejecting the rebate claims on merits is not sustainable in law and the appeal is required to allow with consequential relief.

- d) Identical findings have been given by the adjudicating authority as regards to export of the goods for ARE-I No. 271 dated 09.08.2004. However, in this case, the applicant is a merchant exporter. Thus, considering the judgment in the case of Shree Shyam International and Roman Overseas and Prayagraj Dyeing and Printing Mills of Gujarat High Court, the order passed by the lower authorities are required to set aside in the interest of justice.
- e) The only finding of the lower authorities for denying rebate claims is that the Range Superintendent had not forwarded re-verified duty payment certificates in tamper proof sealed cover though the Range Superintendent was endorsed with the SCN-cum-deficiency memo for supplying duty payment certificate in tamper proof sealed cover after verifying the Cenvat credit availed by manufacturer. Thus, the default was on the part of the Range Superintendent and not the applicant who have no control over the Central Excise Officer. This has been explained by the Revision Authority in the case of in case of Guria Textiles and others vide order No. 1605-1615/12-CX dated 20.11.2012.
- f) The finding of the Commissioner (Appeals) as regards to violation of principles of natural justice to the applicant for non-receipt of hearing memo for the adjudication proceedings is not sustainable in law in absence of any evidence brought on record by the Commissioner (Appeals) that in fact said communication for personal hearing was served to the applicant or returned by post or served in terms of Section 37C of the Central Excise Act, 1944. Thus, the finding of the Commissioner (Appeals) is not correct in law and required to set aside in the interest of justice.

- g) The applicant submits that the Commissioner (Appeals) has not appreciated the grounds of appeal of the applicant vide para 10.1 to 10.10 of the appeal memo which may please be considered the grounds of appeal for the present appeal also while deciding the present appeal for setting aside the orders passed by the lower authorities in the interest of justice.

In the light of the above submissions, the applicant prayed to allow the Revision Application with consequential relief.

4. Several personal hearing opportunities were given to the applicant viz. 26.03.2018, 03.10.2019, 03.12.2019, 24.2.2021, 18.03.2021 and 12.10.2021. However, the applicant did not attend on any date nor have they sent any written communication.

4.1 Since sufficient opportunities have already been given in the matter, the same is therefore taken up for decision based on available records.

5. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government observes that the applicant has raised following issues:

- i. The order of Commissioner (Appeals) rejecting the appeal in terms of Section 35 of the Central Excise Act, 1944 (CEA) is not sustainable in law;
- ii. The rejection of rebate claims on the basis of the only finding of the lower authorities that the Range Superintendent had not forwarded re-verified duty payment certificates in tamper proof sealed cover is not sustainable in law.

7.1 Government observes that the applicant has contended that the impugned OIO was communicated to them on 26.03.2010 and the appeal against it was filed on 26.04.2010, which is within time limit of sixty days

prescribed in Section 35 of CEA. However, from the letter dated 26.04.2010 of the Department, in reply to a RTI query by the applicant seeking communication date of the impugned OIO, it is observed that the impugned OIO was dispatched using postal services on 29.03.2006. Further, from the impugned OIA, Government observes that though the Appellate Authority has pointed out the delay in filing the appeal by the applicant in terms of Section 35 ibid, he has decided the matter on merits. Therefore, this issue becomes redundant, requiring no more discussion.

7.2 As regards the other issue regarding non submission of duty payment certificates in tamper proof sealed cover, Government observes that the Appellate authority has dealt in detail on this issue in the impugned OIA. The relevant paras are reproduced hereunder:

*(8) It is observed that the appellant in the present is a Merchant Exporter cum Manufacturer, who stated to have procured eight consignments of fabrics from three so called manufacturers. Two consignments, from his own unit M/s. Sheetal Exports, Surat; five consignments from M/s. Globe Traders, Thane and one consignment from M/s. Rainbow Dyeing & Printing Mills Pvt. Ltd., Surat and these goods were stated to have been exported. Two units were registered with different Divisions of Central Excise, Surat-I Commissionerate and one unit with Kalyan Division, Thane-I Commissionerate. The appellant thereafter filed rebate claim with the respondent in April, 04 and November, 04 for these eight consignments. At the material time various Alert Circulars were issued by Surat-I Commissionerate about the fraud being committed by different textile manufacturers and exporters by availing Cenvat credit on the basis of invoices pertaining to non-existent/bogus grey suppliers, that were further used by these persons in order to claim rebate that were otherwise not eligible. A Deficiency Memo cum Show Cause Notice was issued to the appellant on 05.05.2005 for non-compliance of self sealing and self-certification procedure as envisaged in Board Circular No. 426/59/98-CX dated*

12.10.1998; 481/47/99-CX dated 23.08.1999 as amended by Circular No. 736/52/2003CX dated 11.08.2003 and requesting them to submit various documents specified therein. Personal hearing was held on 27.05.2005 & 02.06.2005. The appellant neither replied to the Deficiency Memo cum Show Cause Notice nor produced the documents called for nor attended the personal hearing. The respondent by impugned order rejected the rebate claim for the reasons stated in the impugned order. Appellant preferred the appeal after a lapse of 1503 days as stated above.

(11) It is very clear from the above that the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall sanction the rebate either in whole or in part only if satisfied that the claim is in order. In the present case he was not satisfied with the evidence that the appellant had followed the prescribed procedure correctly and about the duty paid on the impugned export goods. Only the rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods can be granted. The next condition is that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse, except as otherwise permitted by the Central Board of Excise and Customs by a general or special order. In the present case it is substantially evident that no evidence that duty has been actually paid by the Companies in question is produced in the manner as specified in the law. **One of the suppliers of the goods to the appellant is he himself (he is Proprietor of the unit) and still he did not produce the evidence of duty payment.** This only raises the doubt about the genuinity of the transaction. When no evidence of duty payment has been provided and substantial condition is not fulfilled by the appellant where is the question of granting refund of the same in the form of

*rebate to these three Companies or for that matter to anyone else including the appellant.*

*(13) The appellant clearly and specifically avoided the adjudicating Officer, did not reply to the Show Cause Notice, did not attend the hearing, did not file any appeal against the impugned order within time and took over four years to file the appeal to clearly buy time for five years and nine months. The goods were stated to have been cleared for export in March, 04 to August,04. Five years from the said period is March, 09 and August, 09. They clearly avoided the Central Excise officers upto this period. The role of the appellant is also suspicious in the transaction with these two Companies and with himself.*

Government concurs with the findings of lower authorities that the applicant took no efforts to ensure compliance of mandatory norms. Their non-cooperation in the adjudication/appeal/review procedure by not availing opportunities to produce evidence showing duty paid nature of the goods and by not filing any written reply leads to the conclusion that goods were non duty paid especially when during the material time Alert notices regarding frauds in Textile Industry had been issued. The Appellate authority has also relied upon various case laws, including pertaining to the applicant, on similar issue – frauds in availment of Cenvat credit and using the same for showing payment of duty in textile industry.

7.3 The applicant has relied upon certain case laws. However, Government observes that in these cases the rebate claims were sanctioned as the claimant had complied with all the norms prescribed for claiming a rebate claim. However, in the instant case, the applicant failed to comply with the mandatory norms for claiming rebate including evidences showing payment of duty, therefore the case laws are not found to be applicable.

7.4 The applicant has requested to consider grounds of appeal vide para 10.1 to 10.10 of the appeal memo submitted to Appellate authority as



grounds of appeal for the present appeal also; however, Government observes that the said appeal memo has not been enclosed by the applicant with the present appeal.

8. In view of the findings recorded above, Government finds no reason to annul or modify the impugned Order-in-Appeal No. BR(379)MI/2012 dated 05.11.2012 passed by the Commissioner (Appeals), Central Excise, Mumbai Zone-I.

9. The Revision Application is disposed of on the above terms.

*Shrawan*  
*19/9/22*

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. *066* /2022-CX (WZ)/ASRA/Mumbai dated

To,  
M/s. Sheetal Exports,  
411, Turning Point Complex,  
Ghod Dod Road, Surat - 395 001.

Copy to:

1. Pr. Commissioner of CGST,  
Mumbai South Commissionerate,  
13<sup>th</sup> & 15<sup>th</sup> Floor, Air India Building,  
Nariman Point, Mumbai - 400 021.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.