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F.No. 195/570,571 & 583/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue.. 27/11

Order No. ~~869-871~~ /13-cx dated 08-07-2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, under section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed,
under section 35 EE of the Central Excise,
1944 against the Order-in-Appeal No.
M-I/RKS/108,110,111/2011 dated 23.03.2011
passed by Commissioner of Central Excise,
(Appeals), Mumbai-I.

Applicant : M/s. Vandana Overseas,
Surat.

Respondent : Commissioner of Central Excise,
Mumbai-I.

ORDER

These revision applications are filed by M/s. Vandana Overseas, Surat against the Orders-in-Appeal No. M-I/RKS/108,110,111/2011 all dated 23.03.2011 passed by the Commissioner of Central Excise (Appeal), Mumbai-I with reference to Orders-in-Original passed by ACCE (Rebate), Mumbai-I.

2. Brief facts of the case are that the applicant, a merchant exporter had filed rebate claims in respect of duty paid goods exported which were manufactured by M/s. Roop Dyeing and Printing Mills and M/s. Rachana Art Prints P. Ltd. The rebate claims were initially sanctioned by the original authority vide impugned Orders-in-Original. The department reviewed the impugned Orders-in-Original and filed appeals before Commissioner (Appeals) mainly in the ground that the jurisdictional range Superintendent has stated that processor/manufacturer had wrongly availed Cenvat Credit in respect of duty paid on grey cloth manufactured by grey manufactures declared as fake, bogus and non existent units. As such, processors/manufacturers paid the amount of cenvat credit, which was fraudulently availed. Commissioner (Appeals) decided the cases in favour of department.

3. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 129 DD of Customs Act, 1962 before Central Government mainly on the following grounds:

3.1 The applicants state and submit that the processor of fabrics, which was exported by the applicants, immediately on pointing out by the jurisdictional Central Excise officers that the Cenvat Credit availed on the grey fabrics was not proper and correct reversed the cenvat credit availed along with interest. The processors M/s. Roop Dyeing and Printing Mills and M/s. Rachana Art Prints P. Ltd. have deposited the amount of cenvat claimed immediately in cash along with accruable interest from the date of taking credit till the date of payment. When the manufacturer has discharged the duty on the same goods the applicants have exported and in dispute, by way of reversing the cenvat credit availed on the grey fabrics, rejecting the

rebate claims filed and sanctioned against the same grey fabrics on which cenvat has been reverse, processed by manufacturer and exported by the applicants, stating that at the time of clearance the fabrics was non duty paid as the cenvat availed was not proper, is not correct and proper. Applicant further stated the manufacture procured the goods from many grey fabric manufacture, who were not declared fake and hence, rebate claims in respect of such genuine grey supplier in admissible.

3.2 The applicants seek to rely on the ratio laid down by the tribunal in USHA Martin Industries Ltd. Vs. Collector of Central Excise reported in 1993 (68) ELT 880 (Trib.) wherein held that Modvat Credit wrongly availed by party when reversed by debit to their RG 23. Account, further payment by them in PLA by cash not to be made it amount to double levy of duty-Rule 57-I of central Excise Rules, 1944. The rejection of Order-in-Original is nothing but recovery of duty again from the applicants, this amounts to demanding duty on the same goods twice. Moreover, the department already recovered the cenvat availed in respect of the rebate granted on grey fabrics supplied to manufacturer. The department itself certified that that M/s. Shreemal Textiles and M/s. Redolent Tex Fab. are genuine grey manufactures. Without admitting and without prejudice to what is stated above the applicants submit the Commissioner (Appeals) would have directed to pay the rebate to that extent. In view of the same the Order-in-Appeal is not proper and correct.

3.3 Applicant relies upon the decision of Government of India, Ministry of Finance, (Department of Revenue), Order No. 198/320-323/06-Cx dt. 18-05-2007 of M/s. Shree Shyam International, Mumbai and F.No. 494/09-Cx dt. 11-12-2009 of M/s. Sameer Export, Surat.

4. Personal hearing was scheduled in this case on 05-03-2013 and 27-06-2013. Personal hearing held on 05-03-2013 was attended by Shri R.V.Shetty, Advocate, on behalf of the applicants who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of department on both the dates.

5. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

6. On perusal of records, Government observes that in these cases rebate claim was initially sanctioned by original authority, but, department reviewed the said orders and filed appeals before Commissioner (Appeals) on the ground that processors have paid duty on exported goods from the cenvat credit which was wrongly availed on the basis of duty paying invoices issued by bogus grey fabrics manufacturers. Commissioner (Appeals) decided the appeals in favour of department. Now the applicant has filed these revision applications on the grounds stated on para 3 above.

7. The applicants have contended that the export of duty paid goods is established as per Customs endorsed ARE-I and Shipping Bills; that on being pointed by department about wrongly availed cenvat credit, the processors have paid the said amount in cash and therefore the rebate claim may be allowed.

7.1 In this regard, it is noted that the export of goods is not disputed by department. The duty payment dispute was resolved by processor by paying the whole amount of disputed Cenvat Credit under TR-6 challan in cash. The fact of payment of said amount is confirmed in Orders-in-Original as well as Orders-in-Appeal. In such a situation, the recovery of already sanctioned rebate claim will amount to duplicacy of demand. Applicant is merchant exporter who has purchased goods from the manufactures on payment of duty on valid duty paying document. There is no evidence available on record to indicate that applicant was a party to fraudulent avaiement of cenvat credit at the end of manufacturer.

7.2 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. Now 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 judgement 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.

11. 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.

12. The 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.

13. At this stage, we would like to deal with the judgements cited by the counsel for the department.

1) Reliance was placed on decision in case of *New India Assurance Co. Shimla v. Kamla and others* reported in (2001) 4 Supreme Court cases 342. In that case a driving license upon its expiry was presented for renewal. Authorities unmindful of its defects, renewed the same. The Insurance Claim repudiated the claim citing the reason that the original license was forged. It was contended that even if previously license may have been forged, upon renewal would be rendered valid. It was in this background that Supreme Court observed that "What was originally a forgery would remain null and void forever and it would not acquire legal validity at any time by whatever process of sanctification subsequently done on it. Forgery is antithesis to legality and law cannot afford to validate a forgery."

2) Reliance was placed on decision of Punjab and Haryana High Court in case of *Golden Tools International v. Joint DGFT, Ludhiana* reported in 2006 (199) ELT 213 (P&H). It was however, a case where the petitioners themselves had imported duty free item on the basis of DEPB allowance which was found to have been fraudulently obtained. It was in this background that the Court held that same would tantamount to contravention of provisions of Foreign Trade (Development and Regulation) Act, 1992. Penalty imposed was thus upheld.

3. Reliance was also placed on decision of Punjab and Haryana High Court in case of *Friends Trading Co. v. Union of India* reported in 2010 (254) ELT 652 (P&H), wherein again DEPB scrips were found to have been obtained by producing false documents. There again the person claiming the duty exemption was the same as one who was found to have committed fraud.

4. *Reliance was placed on decision in case of Sheela Dyeing & Printing Mills P. Ltd. vs. CCE & C, Surat-I reported in 2008 (232) ELT 408 (Guj), 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 appellants 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.*

14.1 *We may also notice that department has issued notice to the original firms namely M/s Amar Enterprises and M/s Harikrishna Enterprise for recovery of duty and penalty. This would thus show that department is pursuing the original entities for recovery of cenvat credit wrongly claimed whereas on other hand it is denying rebate claim of the manufacturer exporters. We may also notice that against M/s Unique exporters, no proceedings have been initiated.*

14.2 *We may also record that though counsel for respondent M/s Roman Overseas contended that without cancellation of cenvat credit granted to M/s Unique Exports, rebate claimed by respondent M/s Roman Overseas cannot be raised by respondent M/s Roman Overseas in facts of the present case. As already noted, before the competent authority the stand of respondent M/s Roman Overseas was clear that fraud was not disputed, but that respondent M/s Roman Overseas was not part of such fraud and that all reasonable care was taken to ensure that goods were duty paid.*

15. *Before closing, however, we may reiterate that the facts in present case are peculiar. Had there been any allegations and evidence to show that respondent M/s Roman Overseas was either part of the fraud in nonpayment of excise duty or had knowledge about the same or even had failed to take care as envisaged under sub-rule(2) of Rule 7 of the Cenvat Credit Rules, situation would have been different. In the present case, when no such facts emerge, we have no hesitation in confirming the view of the Government."*

7.4 Government further notes that SLP filed by department against of said judgment has been dismissed by Hon'ble Supreme Court vide order dated in SLP No. 19577/11.

8. In view of above discussions, Government do not find the impugned Orders-in-Appeal as legal and proper and therefore set aside the said Orders-in-Appeal. The impugned Orders-in-Original where under rebate claims were sanctioned, are restored.

9. The revision applications thus succeed in terms of above.

10. So, Ordered.

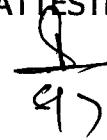


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Vandana Overseas,
177/1, GIDC, Pandesara,
Surat-394221.

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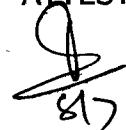


Order No. 869-871 /13-CX dated 08-07-2013

Copy to:

1. The Commissioner of Central Excise, Mumbai-I, 115, New Central Excise Building, M.K. Road, Opp. Churchgate Station, Mumbai-400020.
2. The Commissioner of Central Excise (Appeals) Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
3. The Assistant Commissioner (Rebate) Central Excise, Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
4. Shri R.V.Shetty, advocate, 101 Sterling Court, 'E'-Wing, Opp. Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri (E) Mumbai-400093.
- ✓ 5. PS to JS(RA)
5. Guard File.
6. Spare Copy

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(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)