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सत्यमेव जयते  
**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. 195/1003/13-RA / 9/16  
F. No. 195/1004/13-RA

Date of Issue: 24 .09.2022

ORDER NO. 876-877/2022-CX (SZ) /ASRA/MUMBAI DATED 22 .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 Sameer Exports

Respondent : Commissioner of Central Excise, Mumbai-I

Subject : Revision Applications filed under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal bearing Nos. BPS/85/M-I/2013 & BPS/86/RGD/2013, both dated 23.08.2013 passed by the Commissioner of Central Excise (Appeals-I), Central Excise & Service tax Zone, Mumbai - I.

## ORDER

These Revision Applications have been filed by M/s Sameer Export, B-5112, 3<sup>rd</sup> Floor, Raghukul Textile Market, Ring Road, Surat – 395002 (here-in-after referred to as 'the applicant') against the two Order-in Appeal BPS/85/M-I/2013 & BPS/86/RGD/2013, both dated 23.08.2013, passed by the Commissioner of Central Excise (Appeals-I), Central Excise & Service tax Zone, Mumbai – I. by which he has upheld the Order-in-Original No.12/MTC-R DENOVO/2013-14 dated 19.4.2013 and 20/MTC-R/Denovo/2013-14 dated 7.05.2013 passed by the Deputy Commissioner of Central Excise (MTC-Rebate), Mumbai-I rejecting the rebate claims of Rs.9,85,728/- and Rs.1,64,086/-.

2. Brief facts of the case are that the applicant is a merchant exporter and had procured five consignments of the fabrics from M/s Siddhi Creative falling under the jurisdiction of Division Boisar-II, Thane-II Commissionerate and had procured two consignments of processed fabrics from M/s Dadu Processors Pvt. Ltd. falling under the jurisdiction of Division-II, Surat-I Commissionerate and claimed to have exported these fabrics. Thereafter they filed rebate claims against export of the said goods.

a) The claims in respect of the goods obtained from M/s Siddhi Creative were rejected vide OIO No 344/R/2006 dated 14-06-2006, based on the report of the Assistant Commissioner, Division Boisar-II, Thane-II Commissionerate vide his letter F. No. VI/PI/Siddhi/Bsr-11/05 dated 13.04.2005. The said Assistant Commissioner had informed that investigation carried out against the said M/s Siddhi Creative revealed that the Cenvat credit availed by them was fake and bogus. Further the Bank account details, address of the Proprietor, investment on Plant & Machinery as declared by them during Registration with Central Excise Department was found to be bogus. Feeling aggrieved, the Appellants filed an appeal before the Commissioner of C.Ex

(Appeals), Mumbai-1 which was rejected and the Adjudicating Authority's decision was upheld.

b) The claims in respect of the goods obtained from M/s Dadu Processors Pvt. Ltd. were rejected vide OIO No 292/R/2006 dated 24-04-2006; on the grounds for non-submission of the duty paying documents/certificate.

c) Feeling aggrieved, the Applicants filed an appeal before the Commissioner of C.Ex (Appeals), Mumbai-1. The Commissioner Appeal vide his OIA Nos. M-I/RKS/28/2010 dated 15-12-2010 and M-I/RKS/27/2010 dated 16-12-2010 rejected the applicant's appeal and the Adjudicating Authority's decisions were upheld.

d) Feeling aggrieved by the foresaid Orders, the Applicant filed a Revision Application with Govt. of India. Joint Secretary (Revision Application) who vide his Order No. 1605-1615/12-CX dated 20.11.2012 remanded the case back to original authority for de-novo adjudication with a direction to decide the matter afresh after taking into consideration the observations made by him. The Govt. of India, set aside both the Order-in-Original and Order-in-Appeal, as referred to above.

e) In pursuance of the aforesaid Remand Order, the issue was reexamined, the Respondent again rejected the subject rebate claims vide OIO No. 12/MTC-R/denovo/ 2013-14 dated 19-04-2013 and 20/MTC-R/denovo/ 2013-14 dated 07-05-2013 on the grounds that since the Cenvat credit was earned fraudulently, it was never available for duty payment. The Claimant had therefore, failed to produce appropriate evidence of duty paid character on the exported goods.

f) The applicant filed appeal with the Commissioner Appeals against the said Orders. The Commissioner (Appeals) vide Orders-in-Appeal Nos.

BPS/85/MI/2013 and BPS/86/MI/2013, both dated 23.08.2013 rejected the appeal preferred by the applicant. 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 Department. In light of the same Government takes up both the subject Revision Applications for being decided together.

3. The applicant, aggrieved by the above mentioned Orders-in-Appeal both dated 23.08.2013, have filed the subject Revision Applications on the following grounds:-

(A) Submission in respect of Order-in-Appeal No. BPS/85/M-I/2013 dated 23.08.2013 :-

a) That the lower authorities have failed to appreciate that the said M/s Siddhi Creative were duly registered with the department and were holding valid registration when the Applicants entered into transactions with them. That later on the jurisdictional officer of M/s Siddhi Creative found that the details given by them for registration are found to be fake. Therefore it is submitted that when the Applicants entered into transactions with M/s Siddhi Creative, their registration was valid and hence merely because the said registration was later on suspended, the genuine transactions entered into by M/s Siddhi Creative prior to such suspension cannot be invalidated.

b) That the lower authorities have failed to appreciate that the present Applicants had made full payment of invoices and duty involved to M/s Siddhi Creative and the said amount has not paid back to the present Applicants. Therefore, it is submitted that the present Applicants should not be denied rebate merely because the supplier of goods M/s Siddhi Creative had committed fraud.

c) That the lower authorities have failed to appreciate that Applicants are totally unaware and unknown of the fraud, if any committed by M/s Siddhi

Creative. That the present Applicants are not involved and have no connection with the said fraud as they had dealt with M/s Siddhi Creative through some intermediate person/ broker Mr. Sanyal. In this connection, the Applicants respectfully draw attention of the Government of India towards the statement dated 25.10.2005 of Shri. Sameer Atamprakash Batra, Proprietor of the Applicant firm (vide para No.36 of Order dated 25.12.2008)

"36. During the course of visit to the premises of M/s Guria Textiles, Surat, statement of Mr. Sameer Atamprakash Batra, Proprietor of M/s Sameer Exports, and also his statement as power of attorney holder of M/s Guria Textiles and M/s Batra Internatioinal, was recorded on 25.10.2005. In his statement recorded under Section 14 of the Central Excise Act, 1944, he interalia stated that one Mr. Sanyal, from Thane, who is a textile broker, arranged their all transactions with M/s Siddhi Creative, Boisar; that neither he nor any of the representative from the three firms, namely M/s Sameer Exports; M/s Guria Textiles and M/s Batra International, have ever seen or visited the factory premises of M/s Siddhi Creative, said to be situated at 1, Ganesh Darshan, Bhim Nagar, Tarapur Road, Boisar, Dist. Thane; that they have not placed any written purchase orders; that whenever there was any requirement they gave the samples to Mr. Sanyal, who would bring the counter samples for approval and later Mr. Sanyal would arrange the fabrics, that whenever the fabrics are ready, he would intimate the same telephonically; that they would inform the transporter to co-ordinate with Mr. Sanyal and arrange transportation of the goods to the Port of Shipment or Container Freight Station at Mulund, Mumbai, where the Clearing & Handling Agent (CHA) of the Exporter would take the goods for its subsequent Customs clearance and export; that they do not know the whereabouts of Mr. Sanyal, since they used to contact him only on his mobile number 9374992815; that the markings and numberings to be put on the cartons were communicated to Mr. Sanyal on cell number; that the AREIS were prepared by them on the basis of message received from Mr. Sanyal about the quantity and the value of the goods ready for export; that the AREIS after

*preparation was signed by them and handed over to Mr. Sanyal for signature of the manufacturer who got it countersigned on the back of the AREIS from the concerned Excise Authorities; that Mr. Sanyal would hand over the 1, 2 and 6th copies of the AREIS to the CHA alongwith export invoices and detailed packing list; that that though the Central Excise Invoice shows the removal of goods much before the date of shipment, actually the goods have been picked up through Mr. Sanyal much after the date of removal of the goods mentioned in the Central Excise invoices; that he does not know where the goods were lying between the date of removal from the factory till the date of pick up mentioned in the Lorry Receipts; that the entire payments against the value of fabrics mentioned in the AREIS have been made to M/s Siddhi Creative by cheques. He also submitted ledger account of M/s Siddhi Creative in books of three firms, namely M/s Sameer Exports, M/s Guria Textiles & M/s Batra International."*

The applicant submitted that the aforesaid statement of Sameer Atamprakash Batra, Proprietor of the Applicant firm is totally exculpatory and that there is nothing contrary on the record. That the aforesaid statement was recorded under Section 14 of the Central Excise Act, 1944 and has an evidentiary value in the eyes of the law. Therefore it is submitted that the Applicants are totally innocent and had no idea or knowledge about the anomaly at the end of M/s Siddhi Creative and hence their rebate claims should be sanctioned in the interest of justice. In view of this, it is submitted that the impugned order may be set aside by the Government of India.

d) That the lower authorities have further erred in holding that the Commissioner Thane-II adjudicated the case against M/s Siddhi Creative vide order dated 25.12.2008 and that the present Applicants are penalized for an amount of Rs.1.2 lakhs. It is respectfully submitted that both the learned lower authorities should have appreciated that mere imposition of penalty per se is not sufficient to judged involvement of the Appellants. It is submitted that for judging involvement of the Appellants in the fraud committed by M/s

Siddhi Creative, some documentary or other evidence is required to be brought on the record which is not done in the instant case. In any case and without prejudice to the above, it is respectfully submitted that the Applicants have challenged the aforesaid order dated 25.12.2008 before the Hon'ble Tribunal and the Hon'ble Tribunal has granted unconditional stay vide order dated 06.3.2009. It is also submitted that since the Applicants have challenged the said order dated 25.12.2008 before the Tribunal and their appeal is yet pending for decision of the Tribunal, the matter has not attained finality and hence the said order dated 25.12.2008 cannot be relied upon in other proceeding.

e) That the authorities have failed to appreciate that the Show Cause Notice dated 24.4.2006 was not received by the Applicants and hence they could not clarify the queries raised therein. Therefore it is submitted that no negative inference should have been drawn by both the learned lower authorities on this count.

f) That the lower authorities have failed to appreciate that since there is no dispute or doubt about the manufacture and exportation of the goods by the Applicants on payment of duty, the legitimate benefit of rebate is unequivocally available to the Applicants. It is submitted that these are the two fundamental requirements to be satisfied for the availment of rebate and since both the criteria are satisfied, the Applicants should have been granted rebate.

g) That the impugned order passed by both the learned lower authorities is contrary to the law settled in following judgments/ orders:

a) GOI India Oder No.304-307/07 dated 18.5.2007 in case of M/s. Shyam International, Mumbai

- b) GOI India order No.129/10-CD dated 17.01.2010 in case of M/s Roman Overseas and upheld by the Hon'ble High Court of Gujarat as reported in 2011 (270) ELT 321 (Guj) CCE Vs D P Singh;
- c) Prayagraj Dyeing & Printing Pvt. Ltd. & Ors Vs UOI 2013 (290) ELT 61 (Guj.)
- d) In RE: Vikram International 2012 (277) ELT 425 (GOI)
- e) Kapadia Enterprise Vs UOI 2013 (287) E.L.T. 255 (Guj.)

h) That the lower authorities ought to have appreciated that the administrative authorities including the Excise & Customs Department officials should now act in a manner consistent with broader concept of justice, instead of relying on technicalities in defeating a just claim of a citizen, if a feeling is to be nurtured in the minds of citizens that the Government is "BY AND FOR THE PEOPLE". In fact, both the learned lower authorities are supposed to be quasi judicial authorities in the matter of consideration of the Applicant's rebate claims and therefore the aforesaid concept of justice has greater and graver implications on their exercising the discretionary powers vested in them as quasi judicial authorities.

(B) Submission in respect of Order-in-Appeal No. BPS/86/M-I/2013 dated 23.08.2013 :-

- a) That the impugned order is bad in law and not sustainable inasmuch as the conclusions have been drawn on various issues without application of mind and also without assigning cogent reasons for arriving at the conclusions and for not accepting the contentions raised by the Applicants.
- b) That the impugned order is also contrary to the provisions of the Central Excise Act, 1944 and the Rules made thereunder and also the provisions of the other laws applicable to the issues involved in the Appeal.



c) That the lower authorities have erred in rejecting the rebate claims by totally ignoring the directions given by the Hon'ble Government of India vide order dated 20.11.2012.

d) That the learned lower authorities have erred in rejecting rebate claims on the ground that the Range Superintendent of the processor/ manufacturer M/s Dadu Processors Pvt. Ltd. has not sent Duty Payment Certificate for the subject consignment exported by the Applicants for which rebate has been claimed. It is reported that instead of sending duty payment certificate, the Range Superintendent of M/s Dadu Processors Pvt. Ltd. sent Order in Original bearing No.23/MP/2012-13 dated 18.02.2013 passed by Surat-I Commissionerate in respect of case booked by the DRI against some M/s Ayush Exports and M/s Astha Exim. It is further reported that in the said case, M/s Dadu Processors Pvt. Ltd. had admitted that they had merely supplied invoices receipt of commission to M/s Ayush Exports and M/s Astha Exim and that no goods were supplied to them. The applicant submitted that in the said case, they have no connection with the said matter in any manner whatsoever. It is submitted that if M/s Dadu Processors Pvt. Ltd. had given clarification about their nature of transactions with M/s Ayush Exports and M/s Astha Exim, it does not mean that the said clarification is equally applicable in their case also. Therefore if the Range Superintendent of M/s Dadu Processors Pvt. Ltd. had shown his inability to verify duty payment made by them and provide Duty Payment Certificate for the reasons best known to him, they should not suffer. Thus it is very much evident that non availability of Duty Payment Certificate is merely attributable to inaction, inability and negligence of the departmental officers and there is no fault on the part of the Applicants for which they should not be penalized by rejecting their rebate claims. It is submitted that when fact of exportation and payment of duty by the Applicants to the processor/ manufacturer is neither disputed nor doubted, the impugned order denying genuine rebate claim is liable to be quashed by the Government of India.

e) That the authorities have erred by rejecting rebate claim on the ground that the department has booked a case against M/s Ayush Exports and M/s Astha Exim and the processor M/s Dadu Processors Pvt. Ltd is one of the accomplice in the said matter. In this connection, the Applicants respectfully submit that the Applicants are totally unaware and unknown of the fraud, if any committed by M/s Ayush Exports and M/s Astha Exim and/ or M/s Dadu Processors Pvt. Ltd. That there is nothing on the record to show that the Applicants were party to the fraud, if any committed by the manufacturer M/s Dadu Processors Pvt. Ltd. That in absence of any documentary or other evidence on record to the effect that the present Applicants were accomplice to the said fraud committed by M/s Dadu Processors Pvt. Ltd., the rebate claims should not have been rejected on this count. It is further submitted that there is nothing on the record that the present Appellants has admitted or that the said M/s Dadu Processors has deposed that the transactions entered into by them with the present Appellants are not genuine and that the duty payment made by them is improper or illegal. It is also pertinent to submit here that when there is nothing on the record to prove that the present Applicants were party to the fraud, if any committed by the manufacturer/ processor viz. M/s Dadu Processors Pvt. Ltd., both the learned lower authorities should have adhered to the directions given by the Hon'ble Government of India in the Order dated 20.11.2012 by which the instant proceeding was remanded back. This shows that both the learned lower authorities have glaringly violated the terms of remand in the aforesaid order of the Government of India. Consequently the impugned order is liable to be quashed by the Hon'ble Government of India as being unjust, illegal and unsustainable.

f) That the lower authorities have grossly erred in totally ignoring the monthly return of the relevant period of M/s Dadu Processors Pvt. Ltd. brought on the record by the present Applicants. It is submitted that on failure on the part of

the jurisdictional range officer of the said M/s Dadu Processors Pvt. Ltd., the Applicants brought on the record their monthly returns of relevant period from which it is evident that the said M/s. Dadu Processors Pvt. Ltd had paid necessary duty in respect of the subject consignments exported by the Applicants. In short, the Applicants respectfully submit that merely because of inability and failure on the part of the jurisdictional Range Officer of M/s Dadu Processors Pvt. Ltd. in sending Duty Payment Certificate, both the learned lower authorities should have considered and accepted the alternative evidence available on the record in the form of Monthly Return of relevant period of M/s Dadu Processors Pvt. Ltd. This clearly shows that both the authorities have not applied their mind before rejecting rebate claims and hence their order is required to be set aside by the Hon'ble Government of India.

g) That the lower authorities have failed to appreciate that the deficiency memo cum show cause notice dated 31.01.2006 was not received by the Applicants and hence they could not clarify the queries raised therein. Therefore no negative inference should have been drawn by both the lower authorities on this count.

h) That the lower authorities have failed to appreciate that since there is no dispute or doubt about the manufacture and exportation of the goods by the Applicants on payment of duty, the legitimate benefit of rebate is unequivocally available to the Applicants. It is submitted that these are the two fundamental requirements to be satisfied for the availment of rebate and since both the criteria are satisfied, the Applicants should have been granted rebate.

i) That the impugned order passed by the lower authorities is contrary to the law settled in following judgments/ orders:

- a) GOI India Oder No.304-307/07 dated 18.5.2007 in case of M/s. Shyam International, Mumbai
- b) GOI India Order No. 129/10-CD dated 17.01.2010 in case of M/s Roman Overseas and upheld by the Hon'ble High Court of Gujarat as reported in 2011 (270) ELT 321 (Guj) CCE Vs D P Singh
- c) M/s Prayagraj Dyeing & Printing Pvt. Ltd. & Ors Vs UOI 2013 (290) ELT 61 (Guj.)
- d) In Re: Vikram International 2012 (277) ELT 425 (GOI)
- e) M/s Kapadia Enterprise VS UOI 2013 (287) E.L.T. 255 (Guj.)

j) That the lower authorities ought to have appreciated that the administrative authorities including the Excise & Customs Department officials should now act in a manner consistent with broader concept of justice, instead of relying on technicalities in defeating a just claim of a citizen, if a feeling is to be nurtured in the minds of citizens that the Government is "BY AND FOR THE PEOPLE".

4. In view of the above submissions, the applicant has made a similar prayer in both the cases to set aside the impugned Orders and allow consequential relief.

5. Personal hearing dates were given on 18-01-2018, 05-02-2018, 04-12-2019, 10-02-2021, 24-02-2021, 18-03-2021, 25-03-2021, 15-07-2021 and 22-07-2021. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

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

7. Government finds that the events which led to the aforesaid two cases are based on an intelligence gathered by the officers which exposed an organized syndicate involved in committing a massive fraud of generating fake /bogus Central Excise Invoices indicating payment of duty without any physical sale or purchase of fabrics or actual payment of Central Excise duty for claiming rebate of Central Excise Duty.

8. Government has examined the Order in Original dated 29-02-2008 wherein the entire investigation carried out has been elaborated and the modus operandi of the syndicate exposed. Government finds that the said syndicate used to create Manufacturing/Processing units and all these Units used to obtain registration with the Central Excise Department submitting fictitious address of the residence and registered office without any intention of manufacturing or processing of any goods. These firms used to receive Cenvat invoices showing purchase of finished fabrics from different suppliers situated at Surat but without really purchasing the goods. These invoices were used by them to avail Cenvat credit and utilise the said credit to generate and issue AREIs in the name of the merchant exporters. The Cenvat Credit so availed was used to pay duty when the goods were indicated as sold to a processor/exporter. In the instant case the applicant in the capacity of the merchant exporter, claimed rebate of duty paid by a processor viz. M/s Siddhi Creative and M/s Dadu Processors Pvt. Ltd on the goods purportedly purchased by them from the said processor and exported thereafter. Investigations carried out revealed that M/s Siddhi Creative and M/s Dadu Processors Pvt. Ltd had availed Cenvat credit on the strength of fake/bogus Central Excise invoices issued by the firms based in Surat 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 Siddhi Creative and M/s Dadu Processors Pvt. Ltd.

9. Government has examined the evidences gathered during the investigation. Statements of various persons who perpetrated the fraud were recorded and they have admitted that the chain of transactions, beginning with the fraudulent suppliers, 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 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. M/s Siddhi Creative and M/s Dadu Processors Pvt. Ltd were found to have obtained registrations on the strength of bogus/fake/forged lease agreements and the premises were found to be vacant. 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 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 rôle 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 ie they have shown purchases from M/s Siddhi Creative and M/s Dadu Processors Pvt. Ltd without receiving any material from them; the applicant cannot deny their complicity in the creation of such fake paper transactions. 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 M/s Siddhi Creative and M/s Dadu Processors Pvt. Ltd 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 was rightly denied rebate in the subject case.

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 perpetrated 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 committed but also played a vital role in the same. Government finds that the Commissioner (Appeals) has correctly upon the decision in the case of M/s Karishma Overseas Vs Commissioner of Central Excise, Thane-II [2209(235)ELT 0844(Tri-Bom), M/s Sheetal Exports [2011 (271) ELT 461 (GOI) as in 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 be not bonafide since the suppliers were found to be fake and bogus. Further, Government finds that the decisions of the High Courts in the following cases, are similar to the present case:-

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

*"Rebate - Export rebate - Fraudulent rebate - Exporter claimed rebate of duty paid on goods manufactured by firms who had taken Cenvat credit on the basis of bogus*

*documents - Revisional authority allowed the rebate claim reversing the concurrent findings of authorities below, on erroneous assumption that there was no allegation of want of bona fides on the part of exporter - Central Excise Department was investigating the fraud right from 2005 and an alert Circular was issued on 22-9-2005 - Distinguishing features upon which the Department places reliance, to be considered - Department's contention that Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and such credit was utilized to pay duty - Since there was no accumulation of Cenvat credit validly in law, there was no question of duty being paid therefrom - Such pleas warrant serious consideration by Revisional Authority - Matter remanded to Revisional Authority for afresh revision"*

ii) Sheela Dyeing and Printing Mills [2008 (232) ELT 408 (GUJ)]

*"Cenvat/Modvat - Documents for availing credit - Reasonable steps to ensure identity of manufacturer/supplier - Appellant not satisfied itself about identity and address of supplier either from its personal knowledge, or on the strength of a certificate given by a person whose handwriting or signature it is familiar with, or on the strength of the certificate issued to supplier by Superintendent of Central Excise - Appellant do not fall within any of three categories enumerated under explanation to Rule 7(2) of erstwhile Cenvat Credit Rules, 2002 - Rule 9 of Cenvat Credit Rules, 2004."*

iii) Multiple Exports [2013 (288) ELT 331 (GUJ HC)]

*"Export - Rebate of duty paid on goods exported by merchant-exporter - Unprocessed fabrics purchased from weavers/manufacturers - Credit of duty paid by such weavers passed on to independent processors who undertook dutiable processes and paid Central Excise duties utilizing Cenvat credit - Claim of rebate of duty by merchant-exporter rejected on the ground that weavers from whom unprocessed fabric were procured were fake and non-existent - HELD : Special Civil Application dismissed as the assessee have not taken the reasonable steps enumerated in the Explanation to Rule 7(2) of erstwhile Cenvat Credit Rules, 2002 to ensure that the inputs or the capital goods in respect of which Cenvat credit taken are the goods on which appropriate duty of Excise as indicated in the documents accompanying the goods, have been paid - Rule 18 of Central Excise Rules, 2002."*



iv) Diwan Brothers 2014 (309) ELT 244 (GUJ)

*“Export rebate - Claim of - Denial on ground transaction between exporter and their supplier were fake, without any physical movements of goods and billing activities indulged in only for taking benefit of Cenvat credit and rebate - All authorities below giving concurrent findings of fact with respect to fake transactions - HELD : Unless it was proved by exporter that exported goods used inputs on which Excise duty had been paid, they would not be entitled to rebate - Impugned transactions were fake and there was no evidence to prove actual physical movement of goods - Hence, exporter was not entitled to rebate of Excise duty despite having exported goods on payment of duty - It was immaterial that input supplier was not declared a fake company/supplier, as there was a distinction between fake transaction and fake company - Rule 18 of Central Excise Rules, 2002.*

*Export rebate.- Claim of - Input supplier paid duty demanded by Department due to wrong credit availed by processor and invoices issued by fictitious/unknown persons - HELD : Exporter was not entitled to rebate of duty unless it was proved that input supplier had paid duty on very goods which were supplied to them - It was more so as impugned transactions between exporter and their supplier were found to be fake, and input supplier had demanded refund of duty paid by them - Rule 18 of Central Excise Rules, 2002.”*

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 that no Central Excise duty was paid on the products exported by the applicant and they would hence not be eligible to claim rebate on such exports.

16. In view of the above, Government does not find any infirmity in the Orders-in-Appeal No. BPS/85/M-I/2013 dated 23.08.2013 and BPS/86/M-I/2013 dated 23.08.2013 and upholds the same.

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

*Shrawan*  
*22/9/22*  
(SHRAWAN KUMAR)

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

ORDER No. *376-877*/2022-CX (WZ) /ASRA/Mumbai dated 22.09.2022

To,  
M/s Sameer Exports,  
141, Ashirwad Ind. Park,  
Bhestan, Surat-395023.

Mr. Willingdon & Associates,  
Trident, 'C' Block, 3<sup>rd</sup> Floor, Opp. Geri  
Compound Race Course, Baroda-390007.

Copy to:

1. Commissioner of Central Excise & CGST, Mumbai South, 13<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021
2. Sr. P.S. to AS (RA), Mumbai.
3. Spare Copy
4. Notice Board