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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.195/252/14-RA/4483

Date of Issue: 04.09.2022

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ORDER NO. 913 /2022-CX (WZ) /ASRA/MUMBAI DATED 28.09.2022  
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. Jhawar International,  
Supreme House, near Krishna Petrol Pump,  
Udhna Main Road, Surat 395 002

Respondent: The Commissioner of Central Excise, Mumbai-I

Subject : Revision Applications filed under Section 35EE of Central  
Excise Act, 1944 against the Order-in-Appeal No. M-  
I/RKS/05/2011 dated 03.11.2011 passed by the Commissioner  
(Appeals) Central Excise, Mumbai-I

**ORDER**

The Revision Application has been filed by M/s Jhawar International, Supreme House, near Krishna Petrol Pump, Udhna Main Road, Surat 395 002 (hereinafter referred to as the 'applicant') against the Order-in-Appeal No. M-I/RKS/05/2011 dated 03.11.2011 passed by the Commissioner (Appeals) Central Excise, Mumbai-I

2. The facts of the case briefly stated are that the applicant had filed rebate claims in respect of the duty paid on goods exported vide the following ARE-1's

S.No	R.C No./dated	ARE-1 No./dated	Amount (in Rs)
1	2254/30.09.2005	322/25.01.2005	1,75,550/-
2	2253/30.09.2005	171/21.12.2004	2,95,788/-
3	2252/30.09.2005	170/20.12.2004	2,89,293/-
4	2251/30.09.2005	78/21.12.2004	2,44,143/-
		TOTAL	10,04,774/-

2.1 The applicant failed to submit the duty payment certificate in respect of ARE-1's at Sr. No 2 to 4 and hence the adjudicating authority vide Order-in-Original No 281/R/06 dated 20.04.2006 rejected the rebate claims in respect of Sr. No 2 to 4 and sanctioned the rebate claim at Sr. No 1 amounting to Rs. 1,75,550/- as the applicant had furnished the duty payment certificate from the jurisdictional Range Superintendent.

3. Pursuant to review of the impugned Order-in-Original by the Commissioner, Central Excise, Mumbai-I Commissionerate, in exercise of the powers vested under Section 35E(2) of the Central Excise Act, 1944 and vide Order dated 02.04.2007, directed the Assistant Commissioner (Rebate), Central Excise, Mumbai-I Commissionerate to file an appeal against the impugned Order-in-Original, who filed the appeal on the following grounds

a) that on verification at the processors end, the Cenvat credit availed at the input stage was found to be bogus, as such the Cenvat credit availed by the applicant were not bonafide in nature;

(b) that the duty debited in Cenvat account, in which the credit is accumulated on the basis of fake /bogus documents, cannot be termed as payment of duty;

c) that the availment of Cenvat credit on the basis of fake/ bogus documents, thereby making payment against this fake/bogus Cenvat credit which is nothing but non-payment of duty and thus the applicant was ineligible for claiming rebate.

d) that the impugned Order-in-Original dated 20.04.2006 be set aside

4. The Appellate Authority accepted the appeal filed by the department and made the following observations

4.1 That in the present case the applicant had procured the goods from manufacturers, who have availed input stage Cenvat credit, which on verification were found to be bogus and hence the Cenvat credit availed by the manufacturers were not bonafide in nature. Such inadmissible Cenvat credit was further used for payment of duty on the goods exported and subsequently for claiming the rebate of duty.

4.2 That the availment of Cenvat credit on fake/bogus/fictitious documents and its subsequent utilization for payment of duty on the exported goods was nothing but clearance of goods for export without payment of proper duty. Thus granting rebate of duty, in such case amounted to sanction of rebate against non- payment of duty

5. Aggrieved by the impugned Order-in-Appeal, the applicant filed the Revision Application on the following grounds:

5.1 That as they had no knowledge of the issue of the impugned Order-in-Appeal and were given a xerox copy of the order on 08.04.2014, the limitation period shall start from 08.04.2014.

The applicant has relied upon the following case laws in support of their contention

- i) Gates India (P) Ltd vs. Commissioner of C.Ex, Delhi IV [2013(290) ELT 698 (Tri.-Del)

5.2 That the impugned order was issued without giving the reasons/details/documents for holding that the credit was fake/bogus/fictitious and without giving the relevant documents which showed that the impugned order was illegal and was issued without any basis;

5.3 That the impugned Order-in-Original granting rebate had already attained finality vide the O-I-A No M.I/RKS/40/2010 dated 29.12.2010 passed by CCE(Appeals) in case of the applicant's appeal against the rejected portion and has further merged in Revision Order No 133/13-CX dated 15.02.2013 passed by Joint Secretary(GOI). Hence the said rebate sanctioned earlier cannot be re-opened now as it has attained finality.

The applicant has relied upon the following case laws in support of their contention

- i) Ogilvy & Mather Pvt Ltd vs. Commr. Of S.T, Bangalore [2011 (274) E.L.T. 182 (Kar.)]

5.4 That the sanctioned rebate was in respect of duty paid by manufacturer/processor in 2004-2005 and the said assessment made manufacturer/processor was not varied by the jurisdictional excise authorities of manufacturer/processor. As there was no allegation and/or evidence of collusion, fraud, mis-statement and suppression of facts by the applicant, recovery of rebate sanctioned against duty paid in 2004-05 was time barred. That rebate cannot be denied for alleged procedural deviation as there was no dispute about the factum of exports.

The applicant has relied upon the following case laws in support of their contention

- i). RE: Tata Johnson Controls Automotive Ltd [2012 (275) E.L.T. 492 (G.O.I.)]
- ii) RE: Ikea Trading (India) Ltd [2003 (157) E.L.T. 359 (G.O.I.)]
- iii) Birla VXL Ltd vs. Collector of C.Ex, Chandigarh [1998 (99) E.L.T. 387 (Tri)]
- iv) Allansons Ltd [1999 (111) E.L.T. 295 (G.O.I.)]
- v) Krishna Filamens Ltd [2001 (131) E.L.T.726(G.O.I.)]

5.5 That till date, neither the registration numbers granted to the alleged fake firms had been cancelled by the Surat-1 Commissionerate, nor the credits availed by applicant was questioned by the applicants jurisdictional

authorities. Therefore, based on alert circulars issued subsequently by the Surat-1, substantive benefit of rebate granted cannot be denied.

6. Personal hearing in the case was scheduled for 16.05.2018, 17.10.2019, 05.02.2021, 19.02.2021, 18.03.2021, 25.03.2021, 12.10.2021 and 20.10.2021. However, no one appeared for the hearings on any of the scheduled 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 records available.

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

7.1 Government observes that the applicant has claimed that the impugned Order-in-Appeal was not received by them and a copy of the same was handed over to them at the time of the hearing of the show cause notice issued to them with respect to the recovery of the sanctioned claim. Government notes that though the department has not rebutted the applicants claim of late receipt and subsequent filing of the revision application and hence proceeds to examine the revision application on merits.

7.2. Government observes that the subject matter of the instant revision application is the rebate claim of Rs. 1,75,550/-. It is noted that the Original Authority had sanctioned the rebate claim amounting to Rs. 1,75,550/- in respect of the ARE-1 No 322 dated 25.01.2005, after satisfying himself of the duty paid character of the goods after verification of the duty payment certificate dated 13.12.2005 in tamper proof sealed cover submitted by the applicant. The Appellate Authority, in the impugned Order-in-Appeal, has not questioned the bonafides of the duty payment certificate.

7.3 Government further notes that the impugned Order-in-Appeal, has averred that the applicant procured goods from manufacturers who have availed cenvat credit, which on verification were found to be bogus. Government observes that this finding does not mention regarding

involvement of the applicant in fraudulent availment of Cenvat credit. Moreover, it does not mention anything about the lack of genuineness of duty paying certificates produced by the applicant before the original authority.

8. In view of the above, Government holds that the findings of the Appellate Authority about the denial of the rebate on the grounds of general findings of availment of improper cenvat credit by the manufacturer are not sufficient to extinguish the right of the applicant in a specific case where duty payment certificate was produced and the genuineness of the certificate has not been doubted. The Government sets aside the Order-in-Appeal No M-I/RKS/05/2011 dated 03.01.2011 passed by Commissioner (Appeals) Central Excise, Mumbai-I and upholds the Order-in-Original No. 281/R/06 dated 20.04.2006 to the extent of the rebate of Rs. 1,75,550/- sanctioned in respect of ARE-1 No 322 dated 25.01.2005.

9. The Revision Application is thus disposed of in terms of above..

  
28/9/22

(SHRAWAN KUMAR)

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

ORDER NO. 913 /2022-CX (WZ) /ASRA/MUMBAI DATED 28.09.2022

To,

M/s. Jhawar International,  
Supreme House, near Krishna Petrol Pump,  
Udhna Main Road, Surat 395 002

Copy to :

- 1) The Pr. Commissioner of CGST, Mumbai South, 13<sup>th</sup> and 14<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400 021
- 2) The Commissioner of CGST, (Appeals I), Mumbai, 9<sup>th</sup> Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400 012
- 3) The Commissioner of CGST, Surat, New Central Excise Building, Chowk Bazaar, Surat 395 001
- 4) Sr PS to RA, Mumbai
- 5) Notice Board.
- 6) Spare copy.