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F.No. 198/255-257/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)  
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14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

16/7/15

Date of Issue.....

ORDER NO. 940-942/2013-CX DATED 16.07.2013 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 Act, 1944 against the order-in-appeal No.39-41/CE/LDH/2011 dated 21.02.2011 passed by Commissioner (Appeals) Central Excise, Chandigarh-II.

Applicant : Commissioner, Central Excise Commissionerate, Central Excise House, F Block, Rishi Nagar, Ludhiana.

Respondent : (1) Braun Textiles Processors, Ludhiana(Pb)  
(2) Bagadiya Brothers Pvt. Ltd., Raipur  
(3) Cannon Industries (P) Ltd., Ludhiana

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**ORDER**

These revision applications are filed by Commissioner, Central Excise Commissionerate, Ludhiana against the common orders-in-appeal No. 39-41/CE/LDH/2011 dated 21.01.2011 passed by passed by Commissioner Central Excise Commissioner (appeals), Chandigarh-II with respect to Orders-in-Original passed by the Deputy Commissioner, Central Excise Division-I, Ludhiana.

S. No.	Applicant	Respondent	R.A. No.
1	Commissioner of Central Excise, Ludhiana	M/s Braun Textile Processors, Ludhiana	F.No.195/277-279/11-RA
2.	-do-	M/s Bagadiya Brothers Pvt. Ltd., Raipur	-do-
3.	-do-	M/s Cannon Industries (P) Ltd., Ludhiana	-do-

2. Brief facts of the cases are that the M/s Braun Textile Processors, 851, Industrial Area-A, Ludhiana (Here in after referred as Respondent No.(1) was engaged in the manufacture of excisable goods falling under Chapter 54, 61 and 62 of the First Schedule to the Central Excise Tariff Act, 1985. The party was also availing the facility of Cenvat Credit under Cenvat Credit Rules, 2002. The party had cleared excisable goods for export under claim for rebate of duty under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 either in their own account or through merchant exporter, directly from the factory under self sealing and self certification procedure. The Respondent No.(1) filed the rebate claims amounting to Rs.11,28,086 with Central Excise Division-I for sanction under Section 11B of the Central Excise Act, 1944.

2.1 M/s Bagadiya Brothers Pvt. Ltd., Bagadiya Mension, Jawahar Nagar, Raipur (Respondent No.2) has filed rebate claim for Rs. 5,46,423/- as a merchant exporter under Section 11B of the Act, in respect of AREs-1 issued by respondent No. (1).

2.2 M/s Connon Industries (P) Ltd. 851 & 863 Industrial Area-A, Ludhiana (Respondent No.3) had also filed eight rebate claims for Rs. 28,54,477/- as a merchant exporter, under Section 11B of the Act in respect of AREs-1 the respondent No. (1).

2.4 The rebate claims before sanction was subjected to requisite verification/scrutiny regarding payment of Central Excise duty. The scrutiny of the photocopies of the purchase invoices for the quarter July, 05 to Sept., 05 revealed that the Respondent No. 1 had taken Cenvat Credit amounting to Rs. 2,54,64,610/- during the period Aug, 05 to Sep.,05 on the strength of invoices issued by M/s Braun Textile Processors, 863, Industrial Area-A, Ludhiana (Dealer hereinafter referred to as M/s BTPD. M/s BTPD) had passed on this Cenvat Credit to the Respondent No.1 on the strength of the invoices issued by the suppliers situated at Surat in favour of M/s BTPD during the period April, 2004 to July, 2004, whereas, M/s BTPD had shown the receipt of the material during the period July, 05 to Sep., 05 i.e.. after more than one year. M/s BTPD was asked to explain the delay. M/s BTPD in his reply intimated that they had taken delivery of goods in their premises in the month of July & August, 05 as in 2004 their overseas buyers cancelled the order and they denied to take delivery of the goods; that the suppliers kept on pursuing them to take delivery of goods as they had not taken back the goods; that ultimately in the month of June, 2005 they received export orders for supply of goods for which the goods in question was to be used as raw material, so they took the delivery of goods accordingly. But, M/s BTPD failed to produce any documentary evidence regarding delay in purchase and also failed to produce any documentary evidence to the effect that

these goods had actually been received. In the absence of any documentary evidence to the effect that these goods had actually been received, it was doubtful to ascertain the genuineness of the Cenvat Credit out of which the respondent No.1 had paid duty and respondent No.1, respondent No.2 & respondent No.3 had filed rebate claims.

2.5 From the above, it was evident that rebate was admissible only if duty had been paid on exported goods. In the instant case, the respondent No.1 had paid duty allegedly from the balance of Cenvat Credit which was not admissible to them as discussed above. When availment of Cenvat Credit is ab-initio not admissible the respondent No.1, therefore, the so called payment of Central Excise duty in respect of present rebate claims were no more payment of Central Excise duty. As such it was alleged that the dealer had passed irregular Cenvat Credit to the respondent No.1. It was, therefore, imputed that since the Cenvat Credit utilized for payment of duty of the export goods was wrongly availed and not admissible, its utilization and rebate thereon was not admissible. Since the amount involved in all the rebate claims mentioned above were arisen from the utilization of the irregular Cenvat Credit passed by the dealer of the respondent No.1, as such show cause notices were issued to the respondent proposing rejection of the rebate claims filed by them.

2.6 The adjudicating authority vide Order-in-Original No. 50-52/R/DC/Ldh-I/06-07 dated 10.08.2006 rejected the rebate claim of all the above three respondent parties. Aggrieved against the orders of the adjudicating authority, the respondent No.1, 2 and 3 filed appeals with the Commissioner (Appeals). The Commissioner (Appeals), vide Order in Appeal No.77-84/CE/Ldh/2007 dated 30.03.2007, decided the appeals alongwith other appeals on similar issue and remanded the cases back to the adjudicating authority observing that the rebate claims can be kept pending till the issue of admissibility of Cenvat used for discharge of duty on export goods is decided. The department being aggrieved

with the order of the Commissioner(Appeals) filed Revision applications with the Revisionary Authority i.e. the Joint Secretary, (Revision Application) on the grounds that after amendment in Section 35A of the Act with effect from 11.05.2001, the Commissioner (Appeals) could not remand back the case to the adjudicating authority. The Revisionary Authority vide Order *No.313-323/10-CX* dated 17.02.2010 after accepting the revision application of the department set aside the Order in Appeal *No.77-84/CE/Ldh/2007* dated 30.03.2007 and directed the Commissioner (Appeals) to decide the case on merits. Commissioner (appeals) reconsidered the cases on merits and decided all the cases in favour of respondents.

3. Being aggrieved by the impugned orders-in-appeal, the applicant department has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

3.1 The Commissioner (appeals) relying upon Hon'ble Tribunal orders in the case of CCE, Ahmedabad Vs. Lubi Electronics reported in [ 2009 (245) ELT 551 (Tri. Ahmd.), M/s Coromendal fertilizers ltd. Vs CCE(A) reported in [2009(239)EL T99], CCE,Ahmedabad Vs Dishman Pharma & Chem Ltd. reported in [2007(210) ELT 124] and Pierlite India Pvt. Ltd. Vs CCE, Ahmedabad reported in [2010(17) STR237] observed that there is no limit for taking credit as such allegation of the department that cenvat credit had been taken on the inputs, which had been received after a gap of more than one year after their removal, did not sustain. The Commissioner (Appeals) while observing above had totally ignored the facts of the case. In the instant case the issue is not only the delayed taking of the cenvat credit but also the delayed receipt of the so called inputs, that too after a gap of more than one year.. The party had failed to provide any documentary evidence which could establish the fact that they had actually received the goods after one year and where those goods were lying for a period of more than one year. The dealer had in fact failed to

submit any documentary evidence that these goods were actually received by them. So if dealer has not received the goods, the party cannot receive it and dealer has passed irregular credit and party has taken irregular credit. Moreover, during investigation by the department it was found that the Cenvat credit from which duty was said to be paid by the respondent No. 1 on the so called goods exported was found to be availed fraudulently. The credit was found to be availed by them on the basis of fake/bogus invoices issued by various non-existent firms/companies without actually receiving the inputs. No evidence regarding transport of, inputs from the consignee to the dealer and then to the party like transit-octroi receipts etc. were found. Most of the parties issuing invoices to the dealer were bogus/non-existent. As a result, a show cause notice dated 02.04.2009 to recover the wrongly taken/availed cenvat credit to the tune of Rs.9,48,37,403/- was issued to the party. Therefore when it was established that the credit taken by the party was not genuine, how can the payment of duty from that bogus credit be treated as valid and genuine.

3.2 The Commissioner (Appeals) observed that rebate cannot be denied on the basis of surmises and conjunctures when the fact was that the exports had taken place. The Commissioner (Appeals) while observing this had totally ignored the fact that the party had paid duty out of the balance of cenvat credit not admissible to them. The dealer and the party had not shown evidence of actual receipt of inputs. Further in the discreet investigation carried by the department against the party it has been found that the party was not having the facility to manufacture such a large quantity of goods which they claimed to have been exported but also earthed out the fact that the party had no proof to confirm that the inputs were transferred to various job workers for manufacture and the receive back the finished goods from those job workers. The Commissioner (Appeals) could have taken into account the findings of investigations before allowing the appeal of the party.

3.3 The differences in net weight in various ARE-Is pointed out by the department is very much evident from the triplicate/quadruplicate copies of ARE-Is submitted to the range Office and subsequently original/duplicate copies of ARE-Is submitted along with the rebate claims. For this the party had not even commented anything and remained silent in this aspect.

3.4 It had been difficult to imagine how the party had prepared & submitted different set of Original, duplicate copies of ARE-Is submitted before the Customs authorities and Triplicate, Quadruplicate copies of ARE-Is submitted before the Excise Authorities, because as per law the complete set of the ARE-Is submitted before the department should be prepared at one go and should had same destination, description ,quantity and duty involved at the time of removal of goods. If at later stage i.e. during the export of goods there had been minor change in the ARE-I it was the duty of the party to inform the department immediately. Moreover the change was not minor i.e one & two components like the broad description or minor variation in weight etc .. The parties who had filed the rebates in question had grossly failed to submit the subject information immediately on export, which clearly envisages their malafide intentions. The Commissioner (Appeals) while allowing the rebates of the parties had totally ignored these facts.

3.5 The Commissioner (appeals) relying upon many judgment has observed that the procedural and technical lapses can be ignored in the even of factum of export being satisfied and the goods had been exported. The Commissioner (Appeals) while observing the above should have noted the fact that this is not a normal case where the procedural lapse can be ignored. In the instant case the party had fraudulently fabricated the Cenvat documents worth crores of Rupees (Rs.9,48,37,403/-) to avail the export rebates fraudulently. The fudging of Cenvat documents had already been proved against the party during

investigations conducted against them. The Commissioner (Appeals) while observing the export irregularities in export documents should have taken cognizance of the fact that the party's involvement in fraudulent availment of Cenvat credit had already been established and a large number of the party's rebate claims from the fraudulently availed cenvat credit are under dispute.

3.6 The Commissioner (Appeals) has also erred in not appreciating the spirit of the provisions of the law while deciding the present case. The provisions of the Cenvat Credit Rules, 2002 clearly provide that only that portion of the Cenvat credit can be utilized towards payment of duty on final products, which have been earned on duty paid inputs, which have been received in the factory for use in or in relation to manufacture of final products. Whereas in the present case, the party utilized Cenvat credit which was not admissible to them as neither any duty had been paid by the manufacturers suppliers of inputs thereof nor inputs were received in the factory of the party and only bogus fabricated invoices have been found to be generated. Therefore the goods exported on payment of duty from fraudulently availed Cenvat credit cannot be treated as duty paid goods and thus no rebate is admissible to the party.

3.7 In the era of liberalization and open economy, total reliance has been placed on the assesses and they are enjoying various facilities such as self removal of final products, self assessment of duty, self sealing of export consignments, self certification, making payment of duty on monthly basis etc. In the present case also, the party is enjoying all these facilities, but got involved not only in the fraudulently taking Cenvat credit but also in the utilization of the same towards payment of duty on the goods cleared for exports with the sole motto of getting it encashed by filing rebate claim with the department. The party has taken Cenvat credit in respect of the goods, which have never even come into existence and the question of payment of duty thereon; transportation



and receipt thereof in the factory of the party do not arise at all. The party has played a clear-cut fraud with the Government revenue. Therefore allowing them the rebate of the duty paid from the fraudulently availed Cenvat credit would mean as to granting of blanket permission to the fraudsters to get involved in this type of illegal and unlawful practice of making money, which is totally contrary to the provisions of the law.

4. Personal hearing was scheduled in this case on 10-10-2012, 06.12.2012, 20.02.2013 and 8.7.13. Nobody appeared for hearing on these dates on behalf of respondents. However, Shir I.C. Aggarwal, Inspector, Central Excise, Ludhiana attended hearing on 8.7.13. Hence, Government proceeds to decide the case on merits on the basis of available records.

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

6. Government observes that respondent No. (1), (2) and (3) filed different rebate claim of duty paid on exported goods. Respondent No. (2) & (3) are merchant exporter who exported the goods covered vide various AREs-1 issued by the respondent No.(1), who paid such duty from Cenvat Credit passed on by M/s Braun Textile Processor (BTPD), 863, Industrial Area-A, Ludhiana, a dealer. On investigation it was revealed that M/s BTPD passed on Cenvat Credit to respondents, which was fraudulently availed. As such, duty paid nature of impugned goods could not be established. Accordingly, the original authority rejected the rebate claim filed by the respondents. Commissioner (appeals) decided the cases in favour of respondents. Now, the applicant department has filed these Revision Applications on grounds mentioned in para (3) above.

7. Government observes that department has contended that a detailed investigation was carried out in this case, which established that BTPD, a dealer,

who passed on cenvat credit to the respondents, availed such cenvat credits fraudulently. Department has further stated that a show cause notice dated 2.4.2009 has been issued for wrongly taken/availed fraudulent credit. Under such circumstances, Government finds the payment of duty of which rebates have been claimed, is in dispute. The finality of said show cause notice dated 2.4.2009 will decide the bonafide nature of duty payment or otherwise. As such, rebate admissibility at the impugned claims will have to be decided in the light of outcome of on going adjudication proceedings in said show cause notice dated 2.4.2009.

8. Government finds the coverage / applicability of Hon'ble Apex court's observations in above filed case of CC Vs. Candid Enterprises [2001 (1300 ELT 404 (SC) that "Fraud nullifies everything" and all further decisions based on the same can never be held as final /judiciously correct specifically in a situation when there is provision of law to make further investigations and adjudications as per available procedure for a natural and proper justice for both the parties i.e. the applicants and the respondents. Government notes that there indeed are some investigations which were caused and proper show cause notice was issued and the same has been put to process of adjudication. In fact, the outcome of adjudication will decide whether the duty payment was genuine or not.

9. However, government agrees with the submission of the respondent that "fraud" cannot be termed by mere writing or on presumption / assumption but the same is needed to be established by proper evidence after following a proper course of law-keeping in view the principles of natural justice. Here, Government would like to quote the below mentioned observations/findings of the Hon'ble supreme court of India. Hon'ble Supreme Court in para 10 of the judgment in the case of Escorts Ltd. Vs. CCE Delhi-II [2004 (173) ELT 113 (SC)] observed, inter-alia that one additional or different fact may make a word of

difference between conclusion of two cases; and in para 11 further inferred as following:

*"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single.....  
Detail may after the entire aspect....."*

10. In view of above circumstances, Government sets aside the impugned orders and remands the case back to the original adjudicating authority for denovo adjudication taking into account the observations in the preceeding paras and the final outcome of show cause notice dated 2.4.2009 pending adjudication before adjudicating authority. A reasonable opportunity of hearing will be afforded to the applicants before deciding the case.

11. Revision applications are disposed off in above terms.

12. So, ordered.



(D.P. Singh)  
Joint Secretary to the Govt. of India

Commissioner, Central Excise Commissionerate,  
Central Excise House, F Block,  
Rishi Nagar, Ludhiana.

(Attested)




(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
भारत सरकार/Govt of India  
नई दिल्ली/New Delhi

G.O.I. Order No. 940-942/13-CX dated 16-07-2013

Copy to:-

1. The Commissioner (Appeals), Central Excise, Chandigarh-II, C.R. Building, Plot No. 19, Sector-17-C, Chandigarh.
2. The Deputy Commissioner, Central Excise Division-I, Ludhiana.
3. M/s Braun Textile Processor, 851, Industrial Area-A, Ludhiana,
4. M/s Bagadiya Brothers (P) Ltd., Bagadiya Mansion, Jawahar Nagar, Raipur.
5. M/s Cannon Industries (P) Ltd., 851 & 863, Industrial Area-A, Ludhiana.
- ~~5.~~ PS to JS(Revision Application)
- ~~7.~~ Guard File
8. Spare Copy.

  
16/7  
(Bhagwat P. Sharma)  
OSD (Revision Application)