

REGISTERED SPEED POST



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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No. 195/355-357/15-RA / 4669

Date of issue: 11/10/2022

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ORDER NO. 958/2022-CX (WZ) /ASRA/MUMBAI DATED 10-10-2022 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 CENTRAL EXCISE
ACT,1944.

Applicant : M/s. Bindal Exports Pvt. Ltd.

Respondent : Commissioner, Central Excise, Surat-I

Subject : Revision Application filed, under Section 35EE of the
Central Excise Act, 1944 against the Order-in-Appeal No.
CCESA-VAD(APP-II)/SSP-20to22/2015-16 dated 28.07.15
passed by the Commissioner (Appeals-II), Central Excise,
Customs & Service Tax, Vadodara.

ORDER

These 3 Revision Applications have been filed by the M/s. Bindal Exports Pvt. Ltd., P-216, Kadodara Char Rasta, Kadodara, Taluka - Palsana, Surat – 395 225 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. CCESA-VAD(APP-II)/SSP-20 to 22/2015-16 dated 28.07.2015 passed by the Commissioner (Appeals-II), Central Excise, Customs & Service Tax, Vadodara against following 3 Orders-in-Original:-

OIO No./Date	Claim Amount (in Rs.)
SRT-1/Div-II/311 to 319/14-15/Reb dated 13.10.2014	6,30,622/-
SRT-1/Div-II/320 to 341/14-15/Reb dated 13.10.2014	26,79,125/-
SRT-1/Div-II/342 to 346/14-15/Reb dated 13.10.2014	6,31,977/-

2. The brief facts of the case are that the Applicant, a manufacturer exporter, had exported ‘Dyed & printed fabrics’ and filed rebate claims totally amounting to Rs.39,41,724/- under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. The rebate sanctioning authority, vide impugned 3 Orders-in-Original rejected the rebate claims mainly on the grounds that the authenticity of input invoices received from grey fabrics suppliers on the strength of which cenvat credit was availed and utilized for payment of duty on export goods by the applicant was not established. Aggrieved, the Applicant filed three appeals. However, the Commissioner (Appeals) vide impugned Order-in-Appeal (OIA) rejected the appeals.

3. Aggrieved, the Applicant has filed the instant Revision Application mainly on the following grounds:

- (i) That both the learned lower authorities have failed to appreciate that since there is no dispute or doubt about the manufacture and exportation of the goods on payment of duty, the legitimate benefit of rebate is unequivocally available to the Applicant. 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 Applicant should have been granted rebate.
- (ii) That the learned Commissioner (Appeals) has grossly erred in summarily rejecting rebate claims. It is submitted that after completion of personal hearing, the learned Commissioner (Appeals) called for relevant records of the range office and verification report of the jurisdictional officer, however, these evidences relied upon by him in the impugned order are not disclosed and supplied to the Applicant. It is submitted that pursuant to hearing held before the learned Commissioner (Appeals), the Applicant filed evidences viz. Bank Realization Certificate and remittance advice of bankers in support of their submissions. They also submitted that pursuant to clearance of goods for export no objection/ query was raised by their Range Superintendent or the dock officer in-charge at the port of exportation and hence no doubt can be raised in respect of genuineness of exported goods.
- (iii) That both the learned lower authorities have grossly erred in holding that the Applicant has failed to produce factual evidences to verify the correlation of exported goods with the grey fabrics consumed and that in support of his findings, the learned Assistant Commissioner has referred to and relied upon past correspondence between the Department and the Applicant mentioned at para No. 18 of the Adjudication Order. In this respect, the Applicant respectfully submit that as far as present rebate claims are concerned, till date the department has not made any inquiry or investigation with respect to co-relation of exported goods with the

grey fabrics consumed therein. It is submitted that the learned Assistant Commissioner has referred to and relied upon some past correspondences mentioned at para 18 of his order which have no bearing and relevance to the instant case. It is submitted that the past correspondences referred to and relied upon by the Assistant Commissioner are not specifically mentioned/ relied upon in the subject Show Cause Notice and hence reliance upon the said correspondence by him is beyond the scope of the Show Cause Notice. In any case and without prejudice to the above, it is further submitted that from the correspondence reproduced by the learned Assistant Commissioner in his order, it is evident that there is no reference of the subject rebate claims or of the relevant export documents in the said correspondence. This clearly implies that the said correspondences are irrelevant to the subject rebate claims and hence the same cannot be relied upon in the instant case. It is submitted that picking holes in the defense of the Applicant, indicates that the learned lower authorities have passed the impugned order with bias mind which is illegal and unsustainable. In view of above, it is submitted that there is nothing on the record that the department launched inquiry in this direction and hence at this belated stage after completion of exports, the department has no authority to do so. That both the learned lower authorities have failed to appreciate that after five years of exports and filing of rebate claims, the department had issued the present Show Cause Notice with revenue bias to cast burden on the Applicant to prove the negative. Therefore, it is requested that the impugned order may be set aside by your Honour.

- (iv) That both the learned lower authorities have grossly erred in referring to and rely upon three Show Cause Notices earlier issued to the Applicant. These Show Cause Notices are bearing No. DGCEI/AZU/36-167/ 2009-10 dated 31.03.2010 issued by the Additional Director, DGCEI, Ahmedabad, No. V/(Ch.54)3-11/DEM/2005 dated 14.02.2006 issued by

the Joint Commissioner of Central Excise & Customs, Surat-1 and No. V/ (Ch.54)3-02/DEM/ 08 dated 04.12.2008 issued by Commissioner of Central Excise & Customs, Surat-1.

- (v) That both the learned lower authorities have grossly erred in doubting the genuineness of the export value adopted by the Applicants by holding that the assessable value (around Rs. 60/- per L. Mtr.) of the exported goods appears to be very high and that the Applicants have failed to satisfy the rebate sanctioning authority that the claim is in order and assessable value is justifiable.
- (vi) That both the learned lower authorities have grossly erred in holding that description of exported goods and Chapter tariff heading mentioned in the excise invoice are not tallying with description mentioned in the export documents viz. ARE- 1, Shipping Bill and commercial invoice. It is submitted that both the learned lower authorities should have appreciated that the description of goods is tallying in all the cases and that classification varies for the reason that the classification of exported goods as per Central Excise Invoices is as per the Central Excise Tariff Act and that classification of exported goods as per export documents is as per the Customs Tariff Act. It is submitted that when the cross reference of the excise invoices/ARE-1s and export documents is available, mere mismatch of classification and/or description therein does not ipso facto lead to create doubt about the genuineness of export transactions. It is also submitted that now it is settled legal position that when the exportation of goods is not in dispute and the documents of exports are genuine, minor procedural aberration should not come in the way for sanctioning of rebate claims.
- (vii) That the impugned order passed by both the learned lower authorities contrary to the law settled in following judgments/ orders:
- o CCE vs D P Singh 2011 (270) ELT 321 (Guj)

- Prayagraj Dyeing & Printing Pvt. Ltd. & Ors Vs UOI 2013 (290) ELT 61 (Guj.)
- In RE: Vikram International 2012 (277) ELT 425 (GOI)
- Kapadia Enterprise Vs UOI 2013 (287) E.L.T. 255 (Guj.)

(viii) That both the learned lower authorities should have appreciated that the Notification No.19/2004-CE(NT) does not stipulate any such condition or limitation or fulfillment of procedure, which comes anywhere near the findings given by him in the impugned order for rejecting the instant rebate claims. That he has also failed to appreciate that the said notification also repeats and reinforces the statutory mandate for allowing rebate claim of the duty paid on excisable goods which are exported. That nowhere in this notification, there is any express or implied condition or limitation that the duty paid on the export goods shall be granted as rebate only if the manufacture of the export goods satisfies department that he had also availed the Cenvat credit on his raw material by meeting the level of satisfaction as may be prescribed by the department.

(ix) That both the learned lower authorities grossly erred in ignoring the Applicant's plea that para 4(b) of the aforesaid notification No. 19/2004-CE(NT) clearly lays down that the Assistant Commissioner shall sanction the rebate claim in being satisfied, by comparison of duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the central excise officer. It is not the case of the department that the Assistant Commissioner on such comparison is not satisfied that the rebate claim is not in order on the contrary the Duty payment Certificates sent by the C. Excise Range Superintendent of weaver to the Range office of the Applicant proves that the transactions made during the material time were not fake. In view of this, it is submitted that the

conclusion arrived at by both the learned lower authorities is illegal, improper and invalid and hence the impugned liable to be quashed.

(x) The Applicant prayed that the impugned order be set aside with consequential relief.

4. Several personal hearing opportunities were given to the applicant viz. 07.09.2021, 14.09.2021, 8.12.2021, 14.12.2021. 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 the case file, written submission and perused the impugned Orders-in-Original and Order-in-Appeal.

6. Government observes that the main reason for rejection of claims was that the Applicant had failed to satisfy that the goods are of duty paid character and the claim was in order. Government finds that the basis for arriving at this conclusion by the lower authorities was that a large scale scam had been unearthed in the Surat-I Commissionerate wherein fraudulent Cenvat credit was availed without receipt of inputs i.e. grey fabrics against fake invoices and the same was utilized for payment of duty on the clearance of goods for export under the claim of rebate. This fact was brought to the notice of the applicant in the Show Cause Notice issued to them. However, still the applicant did not provide any evidence to the effect that the duties shown to have been paid at the time of clearance of goods exported were out of genuine Cenvat credit. They should have co-operated with the authorities by providing the called for documents such as grey challans, grey packing lists, Lorry receipts, relevant extract of Lot register etc. to show that grey fabrics had actually been received and consumed by them for manufacturing the export-

fabrics, but they failed to do so. Therefore, in the light of said modus operandi, this failure on the part of applicant made it difficult for the lower authorities to rule out usage of fake input invoices. Under the circumstances, the lower authorities had rightly concluded that the applicant had failed to satisfy the duty paid character of the goods exported.

7.1 In this regard, the Government observes that in the case of Omkar Overseas Ltd. [2003(156) ELT 167(SC)] Hon'ble Supreme Court has held in unambiguous terms that rebate should be denied in cases of fraud. In *Sheela Dyeing & Printing Mills (P) Ltd.* [2007 (219) E.L.T. 348 (Tri.-Mum.)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgment has been upheld by the Hon'ble High Court of Gujarat. In a judgment in the case of *Chintan Processor* [2008 (232) E.L.T. 663 (Tri.-Ahm.)], the Hon'ble CESTAT while deciding the question of admissibility of credit on fraudulent invoices has held as follows:

"Once the supplier is proved nonexistent, it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."

In a similar case of M/s. Multiple Exports Pvt. Ltd., Government vide GOI order No. 668-686/11-Cx dt. 01-06-2011 has upheld the rejection of rebate claim by lower authorities. Division Bench of Hon'ble High Court of Gujarat, vide its order dated 11-10-2012 in SCA No 98/12 with SCA No 101/12 [reported in 2013 (288) E.L.T. 331 (Guj.)], filed by party has upheld the above said GOI Revision order dated 01-06-2011.

7.2 Government also observes that the Applicant has contended that they had exported the goods on payment of duty and therefore, they are entitled to rebate of Excise duty. The same arguments were put forth before Hon'ble High Court of Gujarat in Special Civil Application No. 13931/2011 in Diwan

Brothers v/s Union of India [2013 (295) E.L.T. 387 (Guj.)] and while not accepting the said submission and denying the rebate claim on actually exported goods, the Division Bench had observed as under:

“Basically, the issue is whether the petitioner had purchased the inputs which were duty paid. It may be true that the petitioner manufactured the finished goods and exported the same. However, that by itself would not be sufficient to entitle the petitioner to the rebate claim. In the present case, when the authorities found inputs utilized by the petitioner for manufacturing export products were not duty paid, the entire basis for seeking rebate would fall. In this case, particularly when it was found that several suppliers who claimed to have supplied the goods to the petitioner were either fake, bogus or nonexistent, the petitioner cannot be claimed rebate merely on the strength of exports made.”

7.3. Government also relies on the judgments of Mumbai High Court in the case of Commissioner of Central Excise, Mumbai-I Vs M/s. Rainbow Silks & Anr reported at 2011 (274) ELT. 510 (Bom), wherein Hon'ble High Court, Mumbai, in similar circumstances i.e., when a processor is a party to a fraud, wherein Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and utilized for payment of duty on goods exported, held that *"since there was no accumulation of cenvat credit validly in law, there was no question of duty being paid there from"* and quashed the order of Revisional Authority, sanctioning the rebate on such duty payments.

8. In view of above discussions and findings and also applying the ratio of afore stated case laws, Government holds that the impugned Order-in-Appeal No. CCESA-VAD(APP-II)/SSP-20to22/2015-16 dated 28.07.2015 passed by the Commissioner (Appeals-II), Central Excise, Customs & Service Tax, Vadodara is legal and proper and is hence, upheld.

9. The Revision Application is dismissed being devoid of merits.

Shrawan
10/10/22
(SHRAWAN KUMAR)

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

ORDER No. ⁹³⁶⁻ ~~958~~/2022-CX (WZ)/ASRA/Mumbai dated 10.10.2022

To,
M/s. Bindal Exports Pvt Ltd.,
P-216, Kadodara Char Rasta,
Kadodara, Taluka - Palsana,
Surat - 395 225.

Copy to:

1. Commissioner of CGST & Central Excise,
New Central Excise Building,
Chowk Bazar, Surat - 395 001.
2. Sr. P.S. to AS (RA).
3. Guard file
4. Spare Copy.