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

F.Nos. 195/480/2016-RA  
195/481/2016-RA  
195/482/2016-RA  
195/483/2016-RA

16019

Date of issue: 27.10.22

982-985

ORDER NO. /2022-CX (WZ)/ASRA/MUMBAI DATED 19.10.2022  
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 THE CENTRAL  
EXCISE ACT, 1944.

Applicant : M/s. Rani Sati Impex & Ors.

Respondent : Commissioner of Central Excise & Customs Surat-I

Subject : Four Revision Applications filed under Section 35EE of the  
Central Excise Act, 1944 against the Orders-in-Appeal  
passed by Commissioner (Appeals), Central Excise,  
Customs & Service Tax, Vadodara, Appeals-II

ORDER

Four Revision Applications have been filed against Orders-in-Appeal (OIA) passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara, Appeals-II, as detailed hereunder:-

| RA No.        | Applicant Name                   | Here-in-after referred to as | OIA No./date                                       |
|---------------|----------------------------------|------------------------------|--|
| 195/482/16-RA | Rani Sati Impex<br>Vivek Tulsian | Applicant-I                  | CCESA-VAD(APP-II)/MM-34/2016-17 dated 25.05.16     |
| 195/483/16-RA | Gomti Exports                    | Applicant-II                 | CCESA-VAD(APP-II)/MM-37&38/ 2016-17 dated 25.05.16 |
| 195/480/16-RA | Anil Tulsian                     | Applicant-III                |  |
| 195/481/16-RA | Manibhai Patel                   | Applicant-IV                 | CCESA-VAD(APP-II)/MM-35/2016-17 dated 25.05.16     |

2.1 Brief facts of the case are that the applicant-I had filed four rebate claims totally amounting to Rs.9,83,303/- for export of MMF(Polyester) carried out under four AREIs all dated 14.04.2004. As the export documents viz. ARE1 & Shipping bills had manual corrections, a detailed investigation was carried out by the Department and thereafter Order-in-Original (OIO) No. SRT-I/Div-I/Rebate/ACS-13/2015-16 dated 16.06.2015 was passed by the Assistant Commissioner, Central Excise, Customs & Service Tax, Division-I, Surat-I, wherein it was ordered as under:

| Applicant                        | Role   | Order by Original authority   |
|----------------------------------|--|---|
| Rani Sati Impex<br>(Applicant-I) | Exporter and claimant                                  | Rejected 4 claims amounting to Rs.9,86,303/- and imposed penalty of Rs.9,86,303/- |
| Vivek Tulsian<br>(Applicant-I)   | Proprietor of M/s. Rani Sati Impex                     | Imposed penalty of Rs.5,000/-   |
| Gomti Exports<br>(Applicant-II)  | Supplier of export goods to applicant-I                | Imposed penalty of Rs.9,86,303/-  |
| Anil Tulsian<br>(Applicant-III)  | Partner of applicant-II                                | Imposed penalty of Rs.5,000/-   |
| Manibhai Patel<br>(Applicant-IV) | Legal advisor and authorised signatory of applicant-II | Imposed penalty of Rs.5,000/-   |

3.1 Aggrieved, the applicants filed an appeal before the Commissioner (Appeals) who in turn upheld the order of the adjudicating authority and rejected the appeals vide the impugned OIAs. Hence, the applicants have filed the impugned Revision Applications mainly on the grounds that:

3.2 RA No. 195/482/16-RA

(a) Both the learned lower authorities have committed a grave error by denying cross-examination of Shri Kuchubhai, Manibhai Patel and Dilkumar. It is, submitted that when the Applicants have taken specific stand that Shri Kuchubhai and Dilkumar were responsible and had played active role for reasons best to known them, for effecting corrections/ alterations in the ARE1s etc., it was just and proper to allow the cross-examination of these persons to bring truth on record.

(b) both the learned lower authorities have erred by adopting a grossly wrong and misconceived approach, inasmuch as they have not even considered and addressed themselves to the fact as to whether or not the Applicant had exported the goods. They have allowed themselves to be carried away by the alleged correction/ alterations. However the crucial fact remains that the Applicant had actually exported the goods and also realized foreign exchange as per BRCs.

(c) both the learned lower authorities have failed to appreciate that once the fact of actual export is proved with documentary evidence the benefit of rebate claim should not be denied on flimsy or extraneous grounds.

(d) both the learned lower authorities have grossly erred in ignoring completely the various documents produced by the Applicant alongwith their defence submissions dated 13.05.2015. All these documents prove conclusively and convincingly that the goods claimed

to have been exported by the Applicant have in fact been exported by them. Not only that but the Applicant have also been vigilant to bring foreign exchange from abroad, as is evident from the Bank Realisation Certificates which were also produced before the learned Adjudicating Authority. Rule 18 of the Central Excise Rule 2002 categorically entitles an exporter to claim as a matter of his fundamental right, rebate of duty paid on goods exported. There is no dispute or ambiguity that the exported goods were duly duty paid. There is also no dispute or ambiguity that such duty paid goods were actually exported out of India. Again and very significantly there is no dispute or ambiguity that the foreign importer had remitted foreign exchange for such exported goods as evident from the Bank Realisation Certificates. Thus, all the requirements of Rule 18 of the Central Excise Rules, 2002, in letter and spirit, stand fulfilled in this case, irrespective the alleged correction/ alterations. It is, in other words, the humble submission of Applicant that whether or not there are unauthorized alterations or corrections, the Applicant's actual action of export of duty paid goods and realization of Foreign Exchange is beyond any doubt or dispute or debate. In the face of all these facts, the learned Adjudicating Authority has committed a grave error in his conclusion of denial of rebate claim and on the top of it, by imposing penalties.

(e) both the learned lower authorities have committed a grave error in his biased approach. It is very significant that even if the allegation about corrections or alterations in the ARE-I, Shipping Bills, etc. is accepted, there is no doubt nor is there any allegation as regards the genuineness of the various documents of export listed at Sr.No.(i) to (xii) of para 15(c) of the impugned order in support of export of goods by the Applicant.

(f) both the learned lower authorities have committed a grave error in imposing penalty of Rs.9,86,303/- (equal to the amount of rebate claim) under Rule 25 of the Central Excise Rules, 2002 read with Section 11AC of the Central Excise Act, 1944. This rule, which is also subject the provisions of Section 11AC, is applicable to a producer, manufacturer or registered person of a warehouse or an importer. The Applicant is a merchant exporter. He is, therefore, neither a manufacturer nor producer, nor registered person of a warehouse nor an importer. Consequently, it is a great fallacy on the part of the learned Adjudicating Authority to have invoked Rule 25 which is not at all applicable to a merchant exporter, which is what the present Applicant is. Secondly, the said Rule 25 has 4 clauses i.e. clause (a), (b), (c) & (d) narrating the nature and kind of violations inviting penal action. The present Applicant as a merchant exporter has not committed any of the offences described in the aforesaid clause (a) to (d) of the said Rule 25. Consequently, even on the second criterion, the imposition of penalty under Rule 25 is grossly illegal and unsustainable in law. Thirdly, the said Rule 25 empowers the authorities to impose penalty, subject to provisions of Section 11AC. It is submitted that since Section 11AC does not have any application or relevance to the facts of the present case, the Rule 25 has even otherwise also no application to the facts of the present case. Consequently, the imposition of penalty is blatantly illegal and unsustainable in law.

(g) both the learned lower authorities have committed a grave error by imposing penalty by invoking Section 11AC of the Central Excise Act, 1944. The said Section 11AC is applicable, to a manufacturer for reason of committing any short levy or non levy of Central Excise duty. The present Applicant being not a manufacturer, was not liable to pay any duty. Consequently, there is, and there cannot be, any case

of short levy or non-levy of duty of excise. Consequently, there is no scope or justification or authority or jurisdiction for imposing penalty by invoking Section 11AC of the Central Excise Act, 1944.

(h) In any case, Shri Vivek Tulsian, as Proprietor, and the firm, M/s. Rani Sati Impex cannot and do not have any existence independent of each other and therefore no separate penalty can be imposed on both the proprietorship firm and the proprietor. Please refer to the following judgments:

- i. 2009 (234) ELT 457 (T) Jai Timber Company Vs. CCE
- ii. 2009 (235) ELT 732 (T) Hisaria Electronics Vs. CCE
- iii. 2001 (129) ELT 535 (T) Perfect Industries Vs. CCE
- iv. 2002 (145) ELT 160 (T) Mayur Industries Vs. CCE
- v. 2005 (186) ELT 204 (T) A. R. Shah vs. CCE
- vi. 2008 (228) ELT 226 (T) Kobe Suspension Co. Pvt. Ltd. Vs. CCE

3.3

RA No. 195/480 & 483/16-RA

- a) At the outset, the Applicant most respectfully refer to and rely upon all the grounds contained in the Revision Application filed by the Main Applicant, M/s. Rani sati Impex and also the said Partnership Firm, and also crave leave to take all those grounds as if they are specifically set out in this Application and as forming part and parcel of this Application, with mutatis mutandis changes, and as far as they are not repugnant with or contrary to or in derogation of, the defence grounds otherwise taken up by the Applicant in this Application.
- b) both the learned lower authorities have erred by imposing penalty on the Applicant inasmuch as there is no material or evidence or proof in the Show Cause Notice or in the impugned order to indicate any specific role played by, or to establish any guilt on the part of, the Applicant.
- c) both the learned lower authorities have failed to appreciate that from the facts and circumstances of the case, the Applicant cannot, by any stretch of imagination, be considered to have acquired possession of,

or in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing etc. of the excisable goods which he knew or had reason to believe were liable to confiscation. In other words, neither the Show Cause Notice alleges nor the impugned order contains any findings as to the existence of knowledge or reason or beliefs or consent of the Applicant, in relation to the alleged offence.

- d) both the learned lower authorities have failed to appreciate that 'Mens Rea' is a prerequisite under the relevant penal provisions. There is no allegation or finding in the impugned order about presence of any mens rea, and consequently it is liable to be quashed
- e) In any case, both the learned lower authorities ought to have appreciated that now it is well settled legal position that separate penalty cannot be imposed both on partnership firm and its partners. In the instant case, the present Applicant is a Partner in M/s. Gomti Exports, which is a partnership firm and hence separate penalty cannot be imposed on both of them. In this respect, the Applicant respectfully rely upon the following judgments:-
- o 2010 (258) ELT 204 (Guj.) CCE Vs. Jai Prakash Motwani
  - o 2010 (260) ELT 51 (Guj.) CCE Vs. Mahendra Kumar
  - o 2010 (259) ELT 179 (Guj.) Mohammed Farookh Mohammed Ghani
  - o 2014 (305) ELT 480 (Guj.) Pravin N. Shah vs. CESTAT

3.4

RA No. 195/481/16-RA

- a) At the outset, the Applicant most respectfully refer to and rely upon all the grounds contained in the Revision Application filed by the main Applicants M/s Rani Sati Impex & M/s Gomti Export, and also craves leave to take all those grounds as if they are specifically set out in this Application and as forming part and parcel of this Application, with mutatis mutandis changes, and as far as they are not repugnant with or in derogation of, the defence grounds otherwise taken up by the Applicant in this Application.

- b) both the learned lower authorities have erred by imposing penalty on the Applicant inasmuch as there is no material or evidence or proof in the Show Cause Notice or in the impugned order to indicate any specific role played by, or to establish any guilt on the part of, the Applicant.
- c) there is no basis or justification or any findings discussed in the impugned order to justify complicity or implication of the Applicant and fastening the liability of personal penalty on him. Kind attention is invited to the Affidavit dated 09.09.2007 filed by the present Applicant also the statement dated 14.03.2007 of Shri Jagdish P. Ranpuria, Superintendent of Central Excise deposed before the PSI, Athwa Line Police Station, Surat City
- d) both the learned lower authorities have failed to appreciate that even otherwise also, the Applicant was a mere Legal Advisor and so as a legal representative of the Company, he was carrying out his legal duties within the framework of law. He cannot, therefore, be considered as a person in charge/ responsible for conduct of the employer company's business. Consequently, the Applicant cannot be held liable to penalty under Rule 27.
- e) both the learned lower authorities have failed to appreciate that neither the Show Cause Notice alleges nor the impugned order contains any findings as to the existence of knowledge or reason for beliefs or consent of the Applicant, in relation to the alleged offence.
- f) both the learned lower authorities have failed to appreciate the 'Mens Rea' is a prerequisite under the relevant penal provisions. There is no allegation or finding in the impugned order about presence of any mens rea, and consequently it is liable to be quashed.

On the above grounds the applicants prayed to set aside the orders passed by the lower authorities in the interest of justice.



4.1 A Personal hearing was held in this case on 05.07.2022. Shri Kaza Subramanyam, Advocate appeared online on behalf of all the four Applicants for the hearing and reiterated the earlier submissions. He stated that documents are genuine. He submitted that a written submission has been submitted on the matter.

4.2 In the additional written submissions, the applicants have inter alia contended as under:

Submissions for M/s. Rani Sati Impex and Shri Vivek Tulsian

- a Both the learned lower authorities have failed to appreciate that once the fact of actual export is proved with documentary evidence the benefit of rebate claim not be denied on flimsy or extraneous grounds.
- b As long as the alleged correction/ alterations do not effect or dilute the fact about actual export, the legitimate benefit the export rebate cannot be denied even if there is in reality the factum of corrections/alternations. Such alleged corrections/ alternations will not and cannot take away the Rani Sati Impex's right of claiming rebate claim when the fact about of actual export, is not deniable. This is more so, when the Rani Sati Impex themselves are not a party to, and not involved in, the alleged corrections/ alterations.
- c In any case, Shri Vivek Tulsian, as Proprietor, and the firm, M/s. Rani Sati Impex cannot and do not have any existence independent of each other and therefore no separate penalty can be imposed on both the proprietorship firm and the proprietor.

Submissions for M/s. Gomti Exports

- a Penalty of Rs.9,86,303/- has been imposed on M/s. Gomti Exports as one of the co-accused.
- b M/s. Gomti Exports had purchased Grey Fabrics and got the same processed by independent processing houses. The processed fabrics were received by the Gomti Exports after payment of appropriate

amount of duty of excise under proper and valid Central Excise invoices issued by the concerned independent process houses. These duty paid processed fabrics were then sold to M/s. Rani Sati Impex, who then exported the same and claimed rebates of the duty paid on the exported goods in terms of Rule 18 of the Central Excise Rules, 2002.

- c M/s. Rani Sati Impex had purchased duty paid processed fabrics from the present M/s. Gomti Exports and that thereafter they actually and physically exported the said goods.
- d Both the Lower Authorities have passed orders implicating unwarrantedly the present M/s. Gomti Exports and has imposed draconian penalty of Rs.9,86,303/-. There is not a single act of omission or commission alleged in the Show Cause Notice nor discussed or found in the OIO/OIA as far as the present Applicant is concerned.
- e Both the lower authorities have committed a grave error by denying cross-examination of Shri Kuchubhai, Manibhai Patel and Dilkumar. It is, submitted that when M/s. Gomti Exports have taken specific stand that Shri Kuchubhai and Dilkumar were responsible and had played active role for reasons best to known them, for effecting corrections/ alterations in the ARE-1s etc., it was just and proper to allow the Cross-examination of these persons to bring truth on record.
- f Both the learned lower authorities have erred by adopting a grossly wrong and misconceived approach, inasmuch as they have not even considered and addressed themselves to the fact as to whether or not M/s Rani Sati Impex had exported the goods. They have allowed themselves to be carried away by the alleged correction/ alterations. However the crucial fact remains that M/s Rani Sati Impex had actually exported the goods and also realized foreign exchange as per BRCs.

Submissions for Anil Tulsian, Partner Gomti Exports

- a Penalty of Rs. 5000/- has been imposed on Shri Anil Tulsian, Partner of M/s. Gomti Exports
- b Both Lower Authorities have not given any findings as to how the Shri Anil Tulsian, Partner of M/S. Gomti Exports, has abetted in the alleged offence committed by the main Applicant.
- c In any case, both the learned lower authorities ought to have appreciated that now it is well settled legal position that separate penalty cannot be imposed both on partnership firm and its partners. In the instant case, the Shri Anil Tulsian is a Partner in M/s. Gomti Exports, which is a partnership firm and hence separate penalty cannot be imposed on both of them.

Submissions for Shri Manibhai Patel

- a Penalty of Rs. 5000/- has been imposed on Shri Manubhai Patel, a legal Advisor of M/s. Gomti Exports.
  - b There is no material or evidence or proof to indicate a specific role played by or to establish any guilt on the part of the Applicant.
5. Government has carefully gone through the relevant case records available in the case file, written & oral submission and perused the impugned Order-in-Original and Orders-in-Appeal.
6. Government observes that the main reason for rejection of impugned rebate claims was that the applicants had tampered the statutory documents viz. Shipping bill and ARE-1 and presented these documents to Central Excise Department with an intention to avail rebate of Central Excise duty fraudulently.
7. Government finds that initially while verifying the rebate claims filed by the applicant-I, an enquiry was initiated as the value of export goods declared in export documents was very high as compared to the normal value of printed MMF. During the course of investigation, the fraud carried

out by the applicants was exposed as detailed at para 10 of the impugned OIO, which is reproduced hereunder:

10. *In view of the above, as well as the material evidences collected/gathered during the course of enquiry, it strongly transpires that M/s. Rani Sati Impex, Surat/Shri Vivek Tulsian/ Shri Anil Tulsian have in connivance with their Legal Consultant, Shri Manibhai Patel and their agent Shri Kuchubhai / Shri Dilkumar indulged in tampering the statutory documents like Shipping Bill and creation of forged statutory documents like ARE-I in a sense that they produced ARE-1 No. 441, 442, 443 & 444 all dated 11.05.04 before Customs Officers at JNCH, Nhava Sheva for export of goods under Shipping bill No. 2746800, 2746716 & 2746802 all dated 04.05.2004 and 2753721 dated 07.05.2004 and after passing / shipment of the goods and receipt of document, they managed ARE-1 Nos. 1/RI/04-05, 2/RI/04-05, 3/RI/04-05 & 4/RI/04-05 fraudulently from the jurisdictional Range Office i.e. Range-III, Division-I, Surat-I. Towards this, they tampered with the ARE-I No. 441, 442, 443 & 444 by putting white fluid on the same and allotting ARE-I No. 1/RI/04-05, 2/RI/04-05, 3/RI/04-05 & 4/RI/04-05 which is clearly evident from the original and duplicate copy of ARE-I as well as triplicate copy of ARE-I kept in respective rebate claim files. Shri Manibhai Patel, Legal Consultant, in his statement dated 04.01.05 and 28.02.06 had categorically admitted that he himself had changed ARE-I Numbers as well as corrected other particulars in original and duplicate copy of respective ARE-1 after shipment of goods and receipt of shipping documents from CHA and also obtained signature of jurisdictional Central Excise Officers on triplicate copy of ARE-1. CHA Shri Raju Shinde had also admitted that the said ARE-1 No.1/RI/04-05, 2/RI/04-05, 3/RI/04-05 & 4/RI/04-05 were never presented by him before Customs Officer at JNCH, Nhava Sheva for clearance of goods for export under Shipping Bill No. 2746800, 2746716 & 2746802 all dated 04.05.2004 and 2753721*

*dated 07.05.2004 and towards that he produced EDI copy of Shipping Bill as well as copy of ARE-I (duly passed by Customs) available with him. The verification report received from the Customs Authority at JNCH, Nhava Sheva as well as the report / statement of two Customs Officers viz. Shri S.P.S. Hooda and Shri Anwar Zaidi who attended the shipment work / ARE-I endorsement, copy of the EDI Shipping Bill (Customs copy) also confirmed that the ARE-I Number presented before Customs and endorsed by Customs were 441, 442 443 & 444 all dated 11.05.04 and the purported ARE-1 No. 1/RI/04-05, 2/RI/04-05, 3/RI/04-05 & 4/RI/04-05 were in fact never ever produced to the Customs Officers. It further appears that legally manual amendment of EDI Shipping Bill is not allowed and if at all required, it can be done only through system before the let export order is given by proper officer. The very fact gets confirmed from the aforesaid verification report from Customs Authority of JNCH, Nhava Sheva, as well as submission / reports of the Customs Officers whose names were purportedly used by aforesaid M/s. Rani Sati Impex, Surat/Shri Vivek Tulsian/Shri Anil Tulsian and other persons in fraudulently amending the ARE-I No. in Shipping Bills. The purported correction of ARE-I No. and date in all the four Shipping Bills under reference was done by Shri Manibhai Patel in his own handwriting as per the direction of Shri Vivek Tulsian/Shri Anil Tulsian, as admitted by Shri Manibhai Patel in his foregoing statements. Further, the ARE-I No.441, 442, 443 & 444 all dated 11.05.04 produced before Customs Authority are also not genuine since they were not registered with the jurisdictional Central Excise Authority, which is a mandatory provision. Thus, looking to all these evidences, it appears that M/s. Rani Sati Impex, Surat/Shri Vivek Tulsian had indulged themselves in preparing ARE-Is by giving imaginary/hypothecated numbers 441, 442, 443 & 444 (without registering with Central Excise Authority), producing the same before the Customs authority and subsequently, after shipment of goods, tampering with the said ARE-Is by deleting / removing the*

*hypothecated number by applying white fluid, thereafter getting it registered with Central Excise Authority and allotting new number, presenting such fraudulent documents like tampered ARE-I and Shipping Bills before Central Excise Authority to avail the rebate of Central Excise Duty amounting to Rs. 9,86,303/- fraudulently, though they were very much aware that the ARE-Is produced by them for the said purpose are not the genuine one and that the ARE-Is actually produced before Customs / passed by Customs were never registered with any Central Excise Authority and as such, the same was also not genuine.*

Government further observes that on the basis of this investigation, an FIR was lodged at the jurisdictional Police Station and the matter was pending with Hon'ble Sessions Court, Surat. Under the circumstances, the lower authorities had rightly rejected the rebate claims and imposed appropriate penalties as relevant statutory provisions have been contravened.

8. 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, collusion, or wilful misstatement or suppression. 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.

9. In view of the findings recorded above, Government upholds the impugned Orders-in-Appeal passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Vadodara, Appeals-II and rejects the impugned Revision Applications.

  
19/10/22

(SHRAWAN KUMAR)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 982-985/2022-CX (WZ)/ASRA/Mumbai dated 19.10.2022

To,

1. M/s. Rani Sati Impex /Vivek Tulsian,  
Shop No. L-2, Lower Ground  
Radhey Market, Ring Road, Surat.
2. M/s. Gomti Exports  
3<sup>rd</sup> Floor, Radhey Market,  
Ring Road, Surat.
3. Shri Anil Tulsian,  
c/o. M/s. Gomti Exports  
3<sup>rd</sup> Floor, Radhey Market,  
Ring Road, Surat.
4. Shri Manibhai Patel  
c/o. M/s. Gomti Exports  
3<sup>rd</sup> Floor, Radhey Market,  
Ring Road, Surat.

Copy to:

1. Commissioner of CGST,  
Surat-I Commissionerate,  
New Central Excise Building,  
Gandhi Baugh, Chowk Bazar,  
Surat - 395 001.
2. M/s. Willingdon & Associates,  
Trident, 'C' Block, 3<sup>rd</sup> Floor,  
Opp. Geri Compound,  
Race Course Circle  
Vadodara - 390 007.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Notice Board.