IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION No. 8617 OF 2018

Vandana Overseas .. Petitioner.
v/s.
The Union of India & Others .. Respondents.

Mr. Prakash Shah with Mr. Jas Sanghavi i/b. PDS Legal, for the Petitioner.
Mr. Pradeep S. Jetly with Mr. J. B. Mishra for the Respondents.

CORAM: M.S.SANKLECHA, &
M.S.SONAK, JJ.

DATE : 5th JULY, 2019.

P.C:-

At the request of the parties, Petition is taken up for final disposal at the stage of admission.

2 This Petition under Article 226 of the Constitution of India, challenges the order dated 31st January, 2018 passed by the Government of India in Revision under Section 35EE of the Central Excise Act,1 944 (the Act). By the impugned order, the Respondent-Revenue's Revision Application was allowed by holding that the Petitioner are not entitled to rebate of the duty paid on goods which were exported under the Central Excise Rules, 2002 (the said Rules).

3 Briefly, the facts leading to this Petition are as under:-

(i) The Petitioner is a merchant exporter. During period November 2002 to February 2005, Petitioner exported fabrics under 14 claims of rebate under Rule 18 of the said Rules.

(ii) The above fabrics exported by the Petitioner on which the rebate was claimed had been purchased from one M/s. Rachana Art Print

Private Limited (M/s.Rachana). The exported fabrics were manufactured by M/s. Rachana ;

(iii) At the time M/s. Rachana sold the above fabrics to the Petitioner, it had availed CENVAT Credit and cleared it to the Petitioner on payment of duty. On the basis of the above, the Petitioner made 14 claims for rebate. However, subsequently, a show cause notice dated 20th October, 2008, was issued to M/s. Rachana, seeking to disallow the CENVAT Credit of Rs.33.90 lakhs taken by it on the ground that the CENVAT Credit had been taken on the basis of fake/ bogus invoices. The above notice issued to M/s. Rachana was confirmed by the Additional Commissioner of Central Excise by an order dated 31st July, 2009.

(iv) On the basis above order dated 31st July, 2009 of the Additional Commissioner in case of M/s. Rachana, a show cause notice dated 2nd February, 2010, was issued to the Petitioner, seeking to reject the Petitioner's 14 rebate claims. The above notice dated 2nd February, 2010 was confirmed by the Additional Commissioner of Central Excise by an order dated 21st October, 2010. Thus, Petitioner's 14 claims for rebate stood rejected.

(v) Being aggrieved by the order dated 21st October, 2010 of the Additional Commissioner of Central Excise, the Petitioner filed an appeal to the Commissioner of Central Excise (Appeals). By an order dated 3rd May, 2011, the Commissioner of Central Excise (Appeals) allowed the Petitioner's appeal. This on the ground that on the reversal of CENVAT Credit, M/s. Rachana had paid equivalent amount cash to the Revenue. Thus, entitling the Petitioner to the claim for rebate of duty.

(vi) Being aggrieved with the order dated 3rd May, 2011, the Respondent-Revenue filed a Revision under Section 35EE of the Act to the Government of India. By the impugned order dated 31st January, 2018, the Government of India in Revision, allowed Respondent-Revenue's appeal, by restoring the order dated 21st October, 2010 of the Original Authority. The basis of the impugned order of the Government of India in Revision, was only the order dated 31st July, 2009 passed by the Additional Commissioner of Central Excise in the case of M/s. Rachana.

4 Mr. Shah, the learned Counsel for the Petitioner amended the Petition and brought on record events subsequent to the filing of this Petition. The Petitioner points out that the order dated 31st July, 2009 in the case of M/s. Rachana was challenged in appeal under the said Act. This resulted in the Tribunal by its order dated 17th October, 2011, setting aside the order of the Additional Commissioner of Central Excise and restoring the issue to the Adjudicating Authority for fresh consideration. On fresh consideration, the Joint Commissioner of Central Excise by an order dated 31st May, 2019 dropped the demand raised in the show cause notice dated 20th October, 2008 issued to M/s. Rachana. This on the ground that, it was time barred. Thus, the CENVAT Credit taken by M/s. Rachana stood restored. It is on the basis of the order dated 31st May, 2019 that the Petitioner seeks the setting aside of the impugned order dated 31st January, 2018 and directing fresh consideration by the Government of India in Revision of the Revenue's appeal.

5 We note that, the entire basis/ foundation of the orders passed against Petitioner, denying the benefit of rebate under Rule 18 of the said Rules, was the order dated 31st July, 2009 passed by the

Additional Commissioner of Central Excise in the case of M/s. Rachana. The aforesaid order dated 31st July, 2009 in the case of M/s. Rachana, has now been set aside by the Tribunal and a fresh order dated 31st May, 2019 was passed by the Adjudicating Authority holding that the demand on M/s. Rachana for reversal of CENVAT Credit is not maintainable.

6 In the light of the subsequent developments, which have taken place in these proceedings and now brought on record, it would be appropriate that the impugned order dated 31st January, 2018 of the Government of India in Revision, be set aside. Respondent-Revenue's Revision Application is restored to the Government of India in Revision, for fresh consideration, taking into account the subsequent developments viz:- fact that the notice dated 20th October, 2008 issued to M/s. Rachana, has now been withdrawn/ set aside by the order dated 31st May, 2019 passed by the Jt. Commissioner of Central Excise. Thus, the order dated 31st July, 2009 of the Additional Commissioner of Central Excise cannot now enter into consideration for disposing of the Respondent's 14 claims for rebate.

7 In the above view, the impugned order dated 31st January, 2018 passed by the Government of India in Revision is set aside. The Respondent's Revision Application will be decided in accordance with law. All contentions left open.

8 Needless to state that Government of India in revision, would decide the Respondent's Revision Application pending before it as expeditiously as possible.

9 **Petition disposed of** in the above terms.

(M.S.SONAK,J.) **(M.S.SANKLECHA,J.)**