

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench at Ahmedabad**

REGIONAL BENCH-COURT NO. 3

**Excise Appeal No. 12588 of 2013– SM**

(Arising out of OIA-31/2013/AHD-I/CE/AK/COMMR-A/AHD dated 01/07/2013 passed by Commissioner of Central Excise-AHMEDABAD-I)

**Maniar & Co**

Near Ajit Mills,  
Rakhial,  
Ahmedabad, Gujarat

**.....Appellant**

*VERSUS*

**Commissioner of C.E.-Ahmedabad-I**

C. Ex Bhavan,  
Nr Panjrapole & Polytechnic, Ambavadi,  
Ahmedabad, Gujarat- 380015

**.....Respondent**

**APPEARANCE:**

Shri Vipul Khandhar, Chartered Accountant for the Appellant  
Shir P Ganesan, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**

**Final Order No. 11694/2024**

DATE OF HEARING: 18.07.2024  
DATE OF DECISION: 18.07.2024

**RAMESH NAIR**

This appeal is directed against Order-In-Appeal No. 31/2013/AHD-I/CE/AK/COMMR-A/AHD dated 01.07.2013 passed by the Learned Commissioner (Appeals), wherein the Order-In-Original dated 19.03.2013 has been upheld by holding that refund/rebate sanctioned on the basis of invoice issued by M/s. Greaves Cotton Limited is not proper. The reason for order for recovery of the rebate is on the ground that the invoice issued by suppliers does not bear the details of duty paid invoice issued by the manufacturer.

2. Shri Vipul Khandhar, Learned Chartered Accountant appearing on behalf of the appellant submits that the invoice was issued by the same

company who is the manufacturer of the goods and the invoice contained all the particulars of duty paid by the manufacturer. Therefore, the invoice issued by Depot of the manufacturer is a valid document for taking Cenvat Credit, therefore, the rebate sanctioned on the basis of this invoice cannot be disputed.

3. He further submits that against the rebate sanction order, revenue has not preferred any appeal. Therefore, the sanction of the refund attained finality and merely by issuing the show cause notice for recovery proceeding or the rebate claim is ab inito void in absence of any challenge to the sanctioned order passed by the sanctioning authority.

4. Shir P Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

5. On careful consideration of the submission made by both the sides and perusal of record, I find that the rebate sanction order has not been challenged by the revenue by filing appeal before the Commissioner (Appeal). Therefore, as on date the rebate sanction order is in operation and according to which the rebate was rightly sanctioned to the appellant. Since, there is no challenge to the sanction order, issuing show cause notice for recovery of the refund rebate and proceeding on that show cause notice itself is illegal and incorrect. Unless the sanction order is reversed no action for recovery can be made. Therefore, admittedly since the revenue has not filed any appeal against the sanction order, the entire proceeding of

the present show cause notice and subsequent order-in-original and order-in-appeal are vitiated.

6. Without prejudice to the above, I further find that the invoice on which, the appellant have taken the Cenvat credit, is valid for the reason that the invoice was issued by the same company, who is manufacturer of the goods which was supplied under the invoice issued by the depot of the manufacturer. The invoice contains all the details as required such as duty particular, classification of goods, notification number, central registration number etc. Therefore, I do not find any error in availing the Cenvat credit on the invoice issued by the Depot of the manufacturer. Therefore, on merit also the appellant has rightly taken credit and consequently, the sanction of rebate is in order on both the points. As discussed above, the impugned order is not sustainable. Hence, the same is set aside. Appeal allowed.

*(Dictated and Pronounced in the open court)*

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

Raksha