SPEED POST

F.No. 195/55/2018-R.A., 195/56/2018-R.A.,195/59/2018-R.A.
195/151/2018-R.A., 195/61/2018-R.A., 195/127/2018-R.A.
195/57/2019-R.A. ,195/58/2018-R.A., 195/146-148/2018-R.A.
195/53/2019-R.A., 195/60/2018-R.A.

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 28.1.21.....

Order No. 05-17/2021-CX dated 28-01-2021 of the Government of India, passed by **Sh. Sandeep Prakash,** Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the (i) Order-in-Appeal No. CHD-EXCUS-001-APP-108-2019-20 dated 30.07.2019, (ii) CHD-EXCUS-001-APP-193-208-17-18 dated 29.12.2017, (iii) CHD-EXCUS-001-APP-242-17-18 dated 02.01.2018, (iv) CHD-EXCUS-001-APP-553-554-17-18 dated 09.03.2018, (v) CHD-EXCUS-001-APP-253-260-17-18 dated 02.01.2018, (vi) CHD-EXCUS-001-APP-548-549-17-18 dated 09.03.2018, (vii) CHD-EXCUS-001-APP-110-2019-20 dated 30.07.2019, (viii) CHD-EXCUS-001-APP-243-244-17-18 dated 02.01.2018, (ix) CHD-EXCUS-001-APP-550-552-17-18 dated 09.03.2018, (x) CHD-EXCUS-001-APP- 105-106-17-18 dated 02.01.2018 and (xi) CHD-EXCUS-001-APP-245-252-17-18 dated 02.01.2018 passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicants : M/s Auro Weaving Mills,
M/s Auro Dying Mills,
M/s Auro Spinning Mills,
M/s Auro Textile Mills,
M/s Arisht Spinning Mills.

Respondent : Commissioner of Central Goods & Service Tax, Shimla.

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ORDER

Two revision applications nos. 195/55/2019-RA dated 06/11/2019 & 195/59/2018- RA dated 27/03/2018 have been filed by M/s Auro Spinning Mills against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-108-2019-20 dated 30.07.2019 and CHD-EXCUS-001-APP-242-2017-18 dated 02.01.2018, respectively.

1.2 Three revision applications nos. 195/57/2019-RA dated 04.11.2019, 195/61/2018-RA dated 27.03.2018 and 195/127/2018-RA dated 30.05.2018 have been filed by M/s Auro Dyeing Mills against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-110-2019-20 dated 30.07.2019, CHD-EXCUS-001-APP-253-260-17-18 dated 02.01.2018 & CHD-EXCUS-001-APP-548-549-17-18 dated 09.03.2018, respectively.

1.3 Two revision applications nos. 195/56/2018-RA dated 27.03.2018 & 195/151/2018-RA dated 14.06.2018 have been filed by M/s Auro Textiles against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-193-208-17-18 dated 29.12.2017 & CHD-EXCUS-001-APP-555-17-18 dated 09.03.2018, respectively.

1.4 Five revision applications nos. 195/53/2019-RA dated 04.11.2019, 195/58/2018-RA dated 27.03.2018 & 195/146-148/2018-RA dated 14.06.2018 have been filed by M/s Auro Weaving Mills against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-105-106-2019-20 dated 29.07.2019, CHD-EXCUS-001-APP-243-244-17-18 dated 02.01.2018 & CHD-EXCUS-001-APP-550-552-17-18 dated 09.03.2018, respectively.

1.5 One revision application no.195/60/2018-RA dated 27.03.2018 has been filed by M/s Arisht Spinning Mills against Order-in-Appeal no. CHD-EXCUS-001-APP-245-252 dated 02.01.2018.

1.6 All the five applicants are sister concerns and units of M/s Vardhman Textiles Ltd. Since the issue involved in all the above 13 revision applications is same, they are being taken up together for disposal.

2. Brief facts of the case are that the applicants are engaged in the manufacture of processed/grey fabric and Cotton Yarn under Chapter 52 and 55 of the Central Excise Tariff Act, 1985. The finished goods were exported under claim of rebate of final stage duty paid under Rule 18 of Central Excise Rules, 2002. Subsequently, rebate claims were filed by the applicants which were rejected by the original adjudicating authority on the ground that higher rate of drawback had been claimed by the applicant and as such grant of rebate of excise duty would amount to double benefit. However, the original authority, in some cases, permitted re-credit of the CENVAT credit on capital goods, which was used to pay duty on the export goods. Commissioner (Appeals) has upheld the Orders-in-Original in so far as they relate to rejection of rebate claims but has not upheld the re-credit of CENVAT credit allowed by the original authority, wherever applicable.

3. Being aggrieved, the applicants have filed these revision applications on the ground that claiming higher rate of drawback does not bar them from claiming rebate of duty paid on final products that were exported. They had not availed any CENVAT credit on inputs and input services used for manufacturing the final products but had paid duty from CENVAT credit account of capital goods. Drawback scheme is to neutralize the duty element suffered on inputs and input services. It is also submitted in the revision applications that they should have been paid rebate amount in cash and not as re-credit as allowed by the original adjudicating authority.

4.1 Personal hearings were held on 14.01.2021, 18.01.2021 and 27.01.2021, in virtual mode. Sh. Rupender Singh, Advocate, appeared

for the applicants. He reiterated the contents of the revision applications and requested that as the issue involved in all these revision applications is identical, they may be taken up together for disposal. He highlighted the following:

(i) The subject claims are for rebate of excise duty paid on final product and are governed by the provisions of Rule 18 of CER 2002 read with notification no. 19/2004-CE (NT) dated 06.09.2004. Applicants herein have complied with all the provisions, conditions, limitations thereof and the authorities below have not disputed this position.

(ii) The rebate is sought to be denied on the basis of proviso to Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. These Rules govern the drawback of duties paid on inputs and any non-compliance thereof cannot be used to deny them rebate under Rule 18 of CER, 2002, which is a separate and distinct provision.

(iii) Notwithstanding the position at (ii) above, there has been no non-compliance with the proviso to Rule 3 of the Drawback Rules, 1995. The proviso bars availment of higher rate of drawback inter-alia if the duty paid on inputs has been rebated. In the present cases no claims for rebate of duty paid on inputs has been made rather the claims relate to rebate of duty paid on final product.

(iv) Identical issue has been decided by a Division Bench of Hon'ble Rajasthan High Court in Iscon Surgicals Ltd. [2016(344) ELT 108(Raj)]. Lower authorities have decided the case on the basis of single judge orders of Hon'ble Madras High Court in Raghav Industries Ltd. [2016(334) ELT584(Mad.)] and Kadri Mills (CBE) Ltd. [2016(334) ELT642(Mad.)]. Being a Division Bench order, the judgment of Hon'ble Rajasthan High Court should be given precedence over the orders of Hon'ble Madras High Court.

(v) In the case of Raghav Industries Ltd. (supra), Hon'ble Court has held that the benefits one under Customs, Central Excise Duties

and Service Tax Drawback rules, 1995 under section 75 of the Customs Act and other under Rule 18 of Central Excise Rules, 2002. The Drawback Rules have been made not merely under section 75 of the Customs Act but also, inter-alia, under section 37 of the Central Excise Act. Therefore, judgment in the case of Raghav Industries, followed in Kadri Mills, is per-incurium.

(vi) The judgments of Hon'ble Madras HC in Kadri Mills & Raghav Mills relate to payment of rebate in cash. In these cases, the Hon'ble HC has not interfered with the orders granting rebate by way of re-credit in the CENVAT account. He drew attention to Paras 2 & 7 of the judgments in Kadri Mills.

(vii) The lower authorities have not challenged the payment of duty on export goods from the CENVAT account. If the re-credit is also not permitted, they will be worse off than the exporters who export goods under Bond as per Rule 19 and the duties will also get exported.

4.2 Sh. Singh also furnished the position with reference to the orders passed by the Revisionary Authority in the cases involving the identical issues of sister companies as well as the present status of single judge orders in the cases of Kadri Mills and Raghav Industries.

4.3 No one attended the hearing for the respondents and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of facts available on record.

5.1 The Government has examined the matter. It is observed that the issue involved is squarely covered by the judgment of Hon'ble High Court of Madras, in the case of M/s Raghav Industries [2016 (334) E.L.T. 584 (Mad.)] wherein in Para 13 it has been held:

"While sanctioning rebate, the export goods, being one and the same, the benefits availed by the applicant on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback'

on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the applicant had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit."

5.2 The judgement in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of M/s Kadri Mills (CBE) Ltd. [2016(334) ELT 642 (Mad.)]. Though appeals are said to be pending against these judgments, admittedly, there is no stay on these judgments by any higher judicial authority.

6. Even earlier, the Government in its order No. 1237/2011-CX dated 21.09.2011 in the case of Sabre International Limited Vs. CCE, Noida, reported as 2012(280) ELT575(GOI), has held that allowing drawback on both Customs & Central Excise portion and rebate of duty on final product will amount to double benefit. The Government has also held the same view in its Order No. 4394-97/18-Cx dated 13.07.2018 in the case of M/s Anshupati Textiles, Order No. 195/795/2010 dated 04.09.2018 in the case of M/s RSWM and in Order No. 69-96/19-CX dated 09.10.2019 in the case of M/s. Maharaja Shree Umaid Mills Ltd., Pali, Rajasthan.

7. The applicants have relied on the Hon'ble Rajasthan High Court's judgment in the case of M/s Iscon Surgicals Ltd. Vs UOI [2016(334) ELT 108 (Raj.)] to support their case. Hon'ble Rajasthan High Court has decided this matter in the light of the Apex Court's decision in the case of M/s Spentax Industries ltd. Vs. CCE [2015(324) ELT 686]. It is observed that the judgment in Spentax Industries is an authority on the issue that the exporter is entitled to both the rebates under Rule 18 of Central Excise Rules, 2002 and not one kind of rebate only. The issue involved in the present case, on the other hand, is

regarding admissibility of rebate under Rule 18 when higher rate of drawback has been availed in respect of the same final goods, under the Drawback Rules, which was not the issue before the Apex Court in Spentax Industries. Further, in the case of M/s Raghav Industries (supra), the Hon'ble Madras High Court has clearly distinguished the judgment of Apex Court in the case of Spentax Industries (supra) on the grounds that the case before the Hon'ble Supreme Court was regarding "benefits of rebate on the inputs on one hand as well as on the finished goods exported on the other hand" under Rule 18 ibid whereas in the case on hand, the benefit is claimed under two different statutes i.e. Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and the Central Excise Rules, 2002. It is contended on behalf of the applicants herein that the judgment in Raghav Industries is per-incurium, since it records that the Drawback Rules are made under section 75 of the Customs Act whereas these are also made under section 37 of the Central Excise Act. However, this contention appears to be based on a limited and narrow reading of the judgment in as much as, on a plain reading, the correct purport of the Hon'ble High Court's observations is that the issue involved in Spentax Industries was related to simultaneous availment of rebate on export product as well as inputs under Rule 18 of the Central Excise Rules, 2002 i.e. one statue whereas the present case is regarding availment of rebate on export product under Rule 18 of the Central Excise Rules, 2002 and the simultaneous availment of composite rate of drawback under the Drawback Rules ,i.e., the dispute involves two different statutes, namely, the Central Excise Rules and the Drawback Rules.

8. In view of the above, the Government finds no infirmity in the orders of lower authorities rejecting the rebate claims under Rule 18 of Central Excise Rules, 2002.

9. The applicants have also pleaded that in case rebate in cash is not allowed, the re-credit of duty paid in CENVAT account may be permitted. The instant claims are for rebate under Rule 18 of the Central Excise Rule, 2002. As correctly observed by the Commissioner

(Appeals), there is no provision in Rule 18 ibid to re-credit the duty paid in the CENVAT account in case the claim is rejected. In fact, the Government observes that, in case, such re-credit was to be permitted it would tantamount to granting the rebate by way of re-credit while simultaneously also rejecting the very same claim. This would be an incongruous position not contemplated in law. Hence, the present contention of the applicants is not acceptable. The contention that if the recredit is also denied they would be worse off than the exporters who export the goods under Bond as per Rule 19 also does not merit consideration in as much as exports under claim of rebate under Rule 18 and exports under bond under Rule 19 are two separate and distinct provisions. There is no warrant in law to extend the benefits under Rule 19 to an exporter whose claim for rebate under Rule 18 has been rejected.

10. In view of the above, the revision applications are rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

1. M/s Auro Spinning Mills (Unit of Vardhman Textiles Ltd.)
   Sai Road, Baddi,
   District Solan (HP)
2. M/s Auro Textiles (Unit of Vardhman Textiles Ltd.)
   Sai Road, Baddi,
   District Solan (HP)
3. M/s Auro Dyeing
   Sai Road, Baddi,
   District Solan (HP)
4. M/s Auro Weaving Mills,
   Sai Road, Baddi,
   District Solan (HP)

5. M/s Arisht Spinning Mills,

Sai Road, Baddi,
District Solan (HP)

G.O.I. Order No. 05-17 /21-CX dated 28-01-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Shimla, Ground & 1st Floor, Commercial Parking Complex, Chotta Shimla-171002.
2. The Commissioner (Appeals), CR Building, Plot No. 19-A, Sector 17-C, Chandigarh-160017
3. Sh. Rupender Singh, Advocate, M/s BSM Legal, Advocates & Solicitors, Q-6, Hauz Khas Enclave, New Delhi-16.
4. P.S. to A.S. (Revision Application)
5. Guard file. 6/ Spare copy.

ATTESTED

(Ashish Tiwari)
ASSISTANT COMMISSIONER (R.A.)