F NO. 198/36/14-RA

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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 198/36/14-RA/6630 Date of Issue: 23/11/2022

ORDER NO.103 /2022-CEX (WZ)/ASRA/MUMBAI DATED 22 -11- 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 : Commissioner of CGST, Kolhapur Commissionerate.

Respondent : M/s Indo Count Industries.

Subject : Revision Application filed, under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. – PUN-EXCUS-002-APP-169-13-14 dated 22.01.2014 passed by the Commissioner(Appeals), Central Excise, Pune-II.

ORDER

This Revision Application has been filed by the Commissioner of CGST & CX, Kolhapur Commissionerate (hereinafter referred to as "Applicant") against the Order-in-Appeal No. PUN-EXCUS-002-APP-169-13-14 dated 22.01.2014 passed by the Commissioner (Appeals), Central Excise, Pune-II.

2. The brief facts of the case are that M/s. Indo Count Industries T3, Five Star MIDC, Talandage, Tal-Hatkanangle, Kolhapur-416216 (hereinafter referred as "the Respondent") are registered with Central Excise and are engaged in the manufacture of excisable goods viz. 100% cotton fabrics and made-up articles of cotton falling under Ch. Head 52 & 63 of Central Excise Tariff Act, 1985. They were exporting the said goods as well as clearing the goods for domestic market. They were availing the benefit of exemption Notification no. 30/2004 CE dated 09-07-2004 as amended in case of domestic clearances. The Respondent were paying duty at appropriate rate in terms of Notification No. 29/2004 CE dated 09-07-2004 as amended on the goods exported and claiming rebate of duty so paid under Rule 18 of the Central Excise Rules, 2002. The Respondent had exported the finished goods without payment of duty which were re-imported by them due to rejection. They had paid the duty on these finished goods at the time of importation. They availed the cenvat credit of the said duty paid on importation, in their cenvat credit account maintained for Capital Goods. They utilized this credit for the payment of duty for goods cleared for export and subsequently filed rebate claims for the duty paid at the time of export. A show cause notice dated 14.09.2012 was issued to the Respondent on the issue that they had violated Rule 3 of the Cenvat Credit Rules, 2004 and also the condition of the notification no. 30/2004 leading to inadmissible cenvat credit and therefore the same could not be used for the payment of duty on export goods which made the said rebate claims liable for rejection. The adjudicating authority while deciding the show cause notice rejected the four rebate claims, total amounting to Rs13,98,459/- vide order in original No. Adj/218/Kop-I/2012-13 dated 27.02.2013. Aggrieved by the aforesaid OIO, the

Respondent filed appeal with the Commissioner Appeal. The Commissioner Appeal vide his Order-in-Appeal No. PUN-EXCUS-002-APP-169-13-14 dated 22.01.2014 allowed the appeal with consequential belief and set aside the OIO.

3. Being aggrieved with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

i. As per provisions of Rule 16 of Central Excise Rules, 2002, duty paid goods can be brought to factory and credit of duty paid on such receipted goods can be availed provided such goods suffers duty incidence at the time of initial removal. The Rule 16 reads as under:

"RULE 16: Credit of duty on goods brought to the factory:

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT credit Rules, 2002 and utilize this credit according to the said rules ....."

On careful reading of the Rule, it appears that for availing credit under this Rule, the subject goods are required to suffer duty incidence at the time of its removal. Here, in the present case, the goods were initially cleared without payment of duty. As such, the basic condition for availment of credit has not been fulfilled. Therefore, credit of under said Rule 16 is not admissible.

ii. As per provisions of Rule 9 (c) of Cenvat Credit Rules, 2004, a Bill of Entry has been mentioned as a specified duty paid document for availing credit of duty so paid. In the present case, concerned bill of entries have been assessed to "Nil" duty and hence the credit availed by claimant is inadmissible.

iii. The claimant is availing benefit of exemption under Notification No. 30/2004-CE dated 29.07.2004. Therefore, they are not supposed to avail Cenvat credit of duty paid under any other head other than capital goods. The rejected goods are final product of claimant and therefore it cannot be termed as capital goods. The Circular No. 845/03/2006-CX dated 01.02.2007, referred to, by the Commissioner'[Appeals), has prescribed procedure to be followed and the manner for availment of cenvat credit where benefit of Notification No 29/2004-CE and 30/2004-CE both dated 29.07.2004 is availed simultaneously. As per the said circular manufacturer has to maintain separate books of accounts for goods in respect of which benefit of Notification No. 29/2004 is availed and similarly for goods in respect of which benefit of Notification No. 30/2004 is availed and not to take credit initially and instead take only proportionate input credit on inputs used in the manufacture of finished goods cleared by him on payment of duty. Such proportionate credit should be taken at the end of the month only. It appears that the circular speaks about credits to be availed on inputs used for exempted final product as well as dutiable final product. In the present case, the claimant had not followed the procedure as per Circular and only availed credit of duty paid on re-imported goods (finished goods) treating them as Capital Goods.

iv. In view of the aforesaid grounds, the Order-in-Appeal No PUN-EXCUS-002-APP-169-13-14 dated 22.01.2014 passed by the Commissioner [Appeals], Central Excise, Pune II is not legal and proper and requested to set aside the impugned Order in Appeal.

4. Personal hearing in the matter was fixed on 02.02.2021, 16.02.2021, 16.07.2021 and 20.07.2021. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

5. Government has carefully gone through the relevant case records available in case files, written submissions and perused the impugned Order-in-Original, Order-in-Appeal and the Revision Application.

6. On perusal of the records, Government finds that the issue to be decided in the instant case is:

a) Whether the Respondent had availed the inadmissible cenvat credit by violating Rule 3 of the Cenvat Credit Rules, 2004 and also the condition of the notification no. 30/2004?

b) Whether the rebate claim is liable for rejection if the payment of duty on exported goods is made from such cenvat credit?

7. Government finds that the Commissioner (Appeals) has allowed the appeals filed by the Respondent in this case, on the basis of his earlier decision of the same respondent with respect to earlier rebate claim filed, vide Order-in-Appeal No. P-II/AK/39/2013 dated 24-05-2013 with the remarks -

> *"The earlier appeal was decided by me in favour of the Appellants vide Order-in-Appeal No. P II/AK/39/2013 dated 24.05.2013 and my findings, discussions and decision in the present appeal also remains the same. Therefore, relevant para nos. 8.1 to 8.4 of my order dated 24.05.2013 which also hold good in the subject appeal are reproduced here under....."*

Government finds that the facts and the legal position of the case relied upon and that in the present *lis* to be identical. Government also finds that the Revision Application filed by the Department against the said Order-in-Appeal P-II/AK/39/2013 dated 24-05-2013 has been disposed of by the Government vide Order No.702/2022-CX (WZ)/ASRA/Mumbai dated 19.07.2022 with the following findings/ observations:-

> *"7. As far as the Respondent's eligibility to avail cenvat credit in question, the same has been elaborately discussed under para 8.1 to 8.4 of the OIA passed by the appellate authority before concluding that cenvat credit in question cannot be held as inadmissible and appellate*

authority found respondent entitled for rebate. Applicant has not been able to counter the points made by the appellate authority. Department's contention seeking to reject the rebate claim at this stage without sufficient reason is incorrect and not legal.

8. Now with regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported. The second is that the goods are of a duty paid character. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

9. The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods. Both these facts were never contested by the applicant in the instant case. Also, Applicant's argument that the Respondent had paid the duty from the cenvat credit itself proves that the goods were of duty paid character. Since, both these conditions have been met, rebate cannot be denied to the Respondent.

10. In view of above discussions, Government upholds the Order-in-Appeal No.-P-II/AK/39/2013 dated 24.05.2013 passed by the Commissioner (Appeals), Central Excise, Pune-II. Adjudicating authority is directed to disburse the rebate claim within 8 weeks of the date of receipt of this order."

8. Government notes that the findings and decision arrived at in the above cited case is squarely applicable to the instant case too. Government does not find any fault with the decision of the Commissioner (A), and directs the adjudicating authority to disburse the rebate claim within 8 weeks of receipt of the order.

9. In view of the above, Government does not find any infirmity in the impugned Order-in-Appeal viz PUN-EXCUS-002-APP-169-13-14 dated 22.01.2014 passed by the Commissioner [Appeals], Central Excise, Pune II and upholds the same.

10. The subject Revision Application filed by the department is rejected.

Shrawan 22/11/22

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

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ORDER No. /2022-CEX (WZ) /ASRA/Mumbai Dated 22.11.2022

To,

M/s. Indo Count Industries Ltd.,
T3, Five Star MIDC, Talandage, Tal-Hatkanangle,
Kolhapur-416216.

Copy to:

1. The Commissioner (Appeals), Central Excise,Pune-II, B wing, 4th Floor, ICE House, Sassoon Road,Pune-411001.
2. The Principal Commissioner CGST & CX, Pune Zone, Pune.
3. The Deputy Commissioner, CGST, Div-III, Kolhapur Commissionerate, 228/229, E ward,Tarabai Park Kolhapur 416003.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.