

SPEED POST



F.No. 195/54/2019-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...02./06./2021

Order No. 118/2021-CX dated 01-06-2021 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CHD-EXCUS-001-APP-107-2019-20 dated 29.07.2019 passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicants : M/s Mahavir Spinning Mills, Solan (H.P.).

Respondent : Commissioner of Central Excise & CGST, Shimla.

ORDER

A revision application no. 195/54/2019-R.A. dated 04.11.2019 has been filed by M/s Mahavir Spinning Mills, (Unit of Vardhman Textiles Ltd.), Solan (H.P.) (hereinafter referred to as the Applicant) against the Order-in-Appeal no. CHD-EXCUS-001-APP-107-2019-20 dated 29.07.2019, passed by the Commissioner (Appeals), CGST, Chandigarh, vide which the Commissioner (Appeals) has upheld the Order-in-Original no. 1318/AC/R/Baddi/2017 dated 28.02.2018 of the Assistant Commissioner, Baddi.

2. The instant revision application has been filed with a delay of 06 days. Delay is condoned.

3. Brief facts of the case are that the applicant is engaged in the manufacture of Yarn under Chapter 52/55 of the Central Excise Tariff Act, 1985. The finished goods were exported under claim of rebate of final stage duty under Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002. Subsequently, a rebate claim of Rs 1,97,080/- was filed by the applicant which was rejected by the original adjudicating authority on the ground that higher rate of drawback had been claimed by the applicant and, thus, rebate could not be granted to them as it would amount to double benefit.

4. Being aggrieved, the applicant has filed this revision application 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. The rebate of duty paid on the final product sets off the duty paid on the finished product and the duty drawback sets off the duty suffered at the input stage and it does

not have any bearing on o the final stage duty. 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. It is also submitted in the revision application that they should be paid the rebate amount in cash as a re-credit in CENVAT credit account would have to be paid in cash as per specific provision of Section 142 of the CGST Act, 2017.

5. Personal hearing was held on 31.05.2021, in virtual mode. Sh. Rupender Singh, Advocate appeared for the Applicants. He reiterated the contents of the revision applications and adopted the arguments advanced by him in the personal hearing held on 14.01.2021 in revision application no. 195/59/2018, 195/55/2019, 195/56/2018 and 195/151/2018, involving the identical issue. No one attended the hearing for the respondents and also no request for adjournment has been received. Hence, the matter is taken up for decision on the basis of facts available on record.

6.1 The Government has examined the matter. The issue involved in this case is whether the rebate of Central Excise duty paid in respect of exported goods would be admissible when the applicant exporter had already availed composite (or higher) rate of drawback in respect of the same goods.

6.2 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."

6.3 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.)].

6.4 The Government has consistently held a view that allowing drawback on both Customs & Central Excise portion and rebate of duty on final product will amount to double benefit. Earlier Orders in the case of Sabre International limited [2012(280)ELT 575 (GOI)], Order No. 4394-97/18-Cx dated 13.07.2018 in the case of M/s Anshupati Textiles, Order No. 195/795/2010-CX dated 04.09.2018 in the case of M/s RSWM, Order No. 69-96/19-CX dated 09.10.2019 in the case of M/s. Maharaja Shree Umaid Mills Ltd., Pali, Rajasthan, Order No. 05-17/21-CX dated 28.01.2021, in the cases mentioned in Para 4 above, as well as in Order No. 18-27/2021-CX dated 08.02.2021 refer.

6.5 It has been contended that the Government's Order No. 588-609/2018-CX dated 12.11.2018 in the revision application filed by their parent company, M/s Vardhman Textiles Ltd was challenged before Hon'ble Himachal Pradesh High Court, vide CWP No.

1042 of 2019, and the Hon'ble High Court has granted status quo vide interim order dated 15.05.2019 in respect of rebate/refund earlier allowed. The Government has perused the interim order dated 15.05.2019 and observes that the Hon'ble High Court has only allowed the status quo to be maintained subject to the petitioner furnishing security to the satisfaction of the department. There is no stay on the order dated 12/11/2018 passed by the Government.

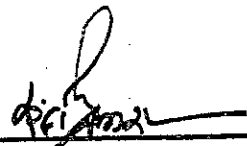
6.6 The applicant has relied heavily on the Hon'ble Rajasthan High Court's judgment in the case of M/s Iscon Surgicals Ltd. Vs UOI [2016(334) ELT 108 (Raj.)] to support their case. Hon'ble Rajasthan High Court has decided this matter in the light of the Apex Court's decision in the case of M/s Spentax 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 i.e., the exporter is entitled to claim rebate of duty paid on the excisable goods as well as the rebate of duty paid on materials used in manufacture or processing of such excisable goods. 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. In its brief order in the case of Iscon Surgicals (supra), the Hon'ble Rajasthan High Court has not indicated the reason for following the ratio of Spentax Industries in respect of the issue in hand. On the other hand, 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 Applicant 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, the Government observes that 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 statute whereas the present case is regarding simultaneous availment of rebate under Rule 18 of the Central Excise Rules, 2002 and the availment of composite rate of drawback under the Drawback Rules in respect of the same export product, i.e., the dispute involves two different statutes, namely, the Central Excise Rules and the Drawback Rules.

6.7 It has been specifically highlighted that the present case relates to rebate to contend that a restriction imposed in respect of drawback cannot be used to deny rebate. The Government observes that in Raghav Industries (*supra*), the Hon’ble Madras High Court has noted the restrictions imposed by virtue of provisions of Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, while deciding the issue in hand. Hence, this contention of the applicant is also covered by the decision in Raghav Industries.

7. In view of the above, the Government finds no infirmity in the impugned Order-in-Appeal.

8. The revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Mahavir Spinning Mills,
(Unit of Vardhman Textiles Ltd.),
Sai Road, Baddi, Distt. Solan (H.P.)- 173 205.

G.O.I. Order No. 118/21-CX dated 01-6-2021

Copy to: -


1. The Commissioner of CGST, Shimla (Camp at Chandigarh),
C.R. Building, Plot No. 19-A, Sector-17-C, Chandigarh –
160 017.
2. Commissioner (Appeals), CGST, Chandigarh.
3. M/s. BSM Legal, Attorneys & Solicitors, 3015, Sector 27-D,
Chandigarh- 160 019.
4. P.S. to A.S. (Revision Application).
5. Guard File.

✓ 6. Spare Copy.

ATTESTED

(Ashish Tiwari)

ASSISTANT COMMISSIONER (R.A.)


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