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F.No. 195/1155-1158/11-RA
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....13.9.13

Order No.1230-1233/13-cx dated 09-09-2013 of the Government of India, passed by Shri D. P. Singh, Joint 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, 1944 against the Orders-in-Appeal Nos. SA/105-108/VAPI/2011 dated 17-08-2011 passed by Commissioner of Central Excise, Customs and Service Tax (Appeals), Vapi.
Applicant	:	M/s Silvassa Span Yarn Industries, Unit-II, Plot No. 3, S. No. 259/1/1, Navnit Shah Industrial Estate, Dadra, Silvassa.
Respondent	:	The Commissioner of Central Excise, Customs and Service Tax, Vapi, 4th Floor, Adarshdham Building, Vapi Daman Road, Vapi-396191.

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ORDER

These revision applications are filed by M/s Silvassa Span Yarn Industries, Unit-II, Plot No. 3, S. No. 259/1/1, Navnit Shah Industrial Estate, Dadra, Silvassa against the Orders-in-Appeal No. SA/105-108/VAPI/2011 dated 17-08-2011 passed by Commissioner of Central Excise, Customs and Service Tax (Appeals), Vapi.

2. Brief facts of the case are that the applicants filed four rebate claims for Rs. 1,81,425/-, Rs. 1,65,904/-, Rs. 1,60,523/- and Rs. 1,84,345/- of duty paid on export consignments duly exported during the period 25-08-2008 to 06-10-2008. The Assistant Commissioner vide impugned orders rejected the rebate claims filed by them on the grounds that they opted for exemption scheme of Notification No. 30/2004-CE dated 09-07-2004 and by virtue of that the accumulated Cenvat Credit had lapsed. The Assistant Commissioner has also observed that applicants have not mentioned on the body of ARE-1s that they have availed Cenvat Credit on the inputs and hence the export consignments are not liable to duty in terms of Notification No. 30/2004-CE and accordingly the clearances made on payment of duty have to be treated as non duty paid and rebate claims are not admissible to the applicant.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeals before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 Both the authorities below have passed their respective orders based on appreciation of incorrect facts. Admittedly, the applicants did not claim exemption under Notification No. 30 of 2004 from 09-07-2004 to 07-06-2006 and availed exemption under Notification No. 29 of 2004 during this period. It is only from 08-06-2006 that the applicants opted for dual system and claimed benefit of both the exemption. The applicants opted for the benefit of both the notification and at no point of time the applicants claimed full exemption for all their clearances either prior

to June 2006 or thereafter. Both the authorities below failed to appreciate that the applicants reversed the credit pertaining to the inputs and final products lying in stock as on 08-06-2006 as the same was proposed to be cleared without payment of duty under Notification No. 30 of 2004 and took the credit of duty paid inputs in respect of final products that were manufactured and cleared by availing the exemption under Notification No. 29 of 2004 on and from 08-06-2006.

4.2 It is submitted that in circular No. 795/28/2004-Cx dated 28-07-2004 issued by the board, it is clarified that Notification No. 29/2004-CE dated 09-07-2004 and Notification No. 30/2004-CE dated 09-07-2004 are independent of each other and can be availed simultaneously. Accordingly, the removal of final products by the applicants following dual system was consistent with the above circular. The applicants continued the existing Central Excise registration with accumulation of credit, which is legally permissible and there was no bar in utilization of the credit either for home consumption or export. The authorities below erred in holding that unutilized credit as on the 08-06-2004 lapsed when the applicants opted for dual system. The applicants did not operate under complete exemption and there is no provision for lapsing of any accumulation of cenvat credit.

4.3 As per the provisions of rule 11 (2) of CCR, 2004, SSI unit opting for exemption is required to reverse the credit on stock and thereafter balance amount if any lying in credit will lapse. Similarly, as per Rule 11 (3) of CCR, 2004, the manufacturer is required to reverse the credit on the stock of goods involved in finished products which subsequently becomes exempted. In the present case, the applicants were required to reverse the credit only in respect of those inputs used for exempted clearances under Notification No. 30/2004-CE dated 09-07-2004, which the applicants did for the goods removed under total exemption under Notification No. 30 of 2004. The provisions of Rule 11 (3) of CCR, 2004 has no application in the facts of the present case. Without prejudice to the aforesaid, it is submitted that the rule 11 of the Cenvat Credit Rules, 2004 was inserted with effect from 01-07-2007 and in view thereof, the accumulation of credit on the date of

availment of the exemption under Notification No. 30/2004-CE dt. 09-07-2004 with effect from 08-06-2004 does no arise.

4.4 The Government of India in the case of Inter Globe Services reported in 2011 (272) ELT 476 (GOI) set aside the findings of the Commissioner (Appeals) that the applicants in the said case were not claiming the cenvat credit on the inputs used in the manufacture of exported goods and hence they were working under exemption Notification No. 30/2004 CE dt. 09-07-2004 holding that the said conclusions were without any basis. In the said order, the GOI observed that the option is with the manufacturer to avail or not to avail cenvat credit on the inputs as the availment of cenvat credit is a beneficial scheme and there is nothing in the Notification No. 29/2004-CE dt. 09-07-2004 for the manufacturer to compulsorily avail the cenvat credit on the inputs and there is bar only on the non-availment of cenvat input credit under Notification No. 30/2004 CE dt. 09-07-2004. The GOI directed that rebate of duty paid on export goods under Notification No. 29/2004 CE dt. 09-07-2004 is admissible to the applicants if they have complied with the Board Circular Nos. 795/28/2004-CX dt. 28-07-2004 and 845/3/2006-CX dt. 01-02-2007.

4.5 The applicants exported the goods under the claim of rebate of duty under Notification No. 19/2004-CE (NT) dt. 06-09-2004 issued under Rule 18 and as per the conditions and limitations prescribed under para 2 of the said Notification. The rebate claim is required to be sanctioned if goods are exported and duty payment is made. Thereof is no dispute that the goods are exported and duty payment is made by the applicants.

4.6 It is contention of the department that the payment of duty debited is not legal and proper and to be treated as deposit amount is clearly erroneous and incorrect in the facts of the present case. Without prejudice to the aforesaid and in any event, it is submitted that both the authorities below wrongly invoked the provisions of Rule 11 (3) of CCR, 2004 which was inserted by Notification No. 10/2007-CE (NT) dt. 01-03-2007 which reads as follows:

" In rule 11 of the said rules, after sub-rule (2) the following sub-rules shall be inserted, namely-

" (3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the Cenvat credit, if any, taken by him in respect of inputs received for use in the manufacturer of the said final product and is lying in stock or in process or is contained in the final product and is lying in stock or in process or is contained in the final product lying in stock, if,

(i) He opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the act: or

(ii) The said final product has been exempted absolutely under section 5A of the act, and after deducting the said amount from the balance of cenvat credit, if any, lying in his credit the balance, if any, still remaining shall lapses and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India are exported. "

In the instant case, no absolute exemption was claimed by virtue of introduction of dual system i.e. dutiable scheme of Notification No. 29/2004-CE dt. 09-07-2004 and exemption scheme Notification No. 30/2004-CE dt. 09-07-2004. Even exemption scheme of Notification No. 30/2004-CE dt. 09-07-2004, is conditional subject to condition that no input stage credit is availed and thereby no absolute exemption. It is submitted that both the authorities below wrongly invoked Rule 11 (3) of CCR, 2004 which is not at all applicable in the present case.

4.7 In view of the aforesaid, it is submitted that since in the present case also, no objection was raised by the revenue at the time of payment of duty and at the time of the export of goods, it is not open for them now to partly reject the rebate claim on any other grounds.

5. Personal hearing scheduled in this case on 08-08-2013 at Mumbai was attended by Shri Durga Prasad Poojari, advocate on behalf of the applicant who reiterated the grounds of Revision Application.

6. Government has carefully gone through the relevant records available in case files, oral and written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

7. On perusal of records, Government observes that in the instant cases the original authority have rejected the rebate claims mainly on the grounds that applicant had opted for exemption under Notification No. 30/2004-C.E., dated 9-7-2004 in the year 2006 as per their letter dated 08-06-2006 and they paid back the credit on inputs lying is stock, the inputs contained in semi finished and finished goods lying in stock at the time of exercising said option; that after deducting the said amount from the cenvat credit, the balance lying in cenvat account had lapsed but the applicant subsequently utilized the same for payment of duty on exported goods. The payment of duty from lapsed cenvat credit was treated as non payment of duty and the rebate claims were held in admissible under rule 18 of the Under Rule 2002 r/w Notification No. 19/04-CE (NT) dt. 06-09-2004. The Commissioner (Appeals) upheld the said orders. Now applicant has contested the impugned Orders-in-Appeal on the grounds states as para 4 above.

8. Applicant has contended that he had opted for simultaneous availment of both the notification No. 29/04-CE & 30/04-CE both dt. 09-07-2004 and w.e.f. 08-06-2006 and prior to that they were availing the benefit of only one notification i.e. 29/04-CE dt. 09-07-04, that applicants reversed the cenvat credit pertaining to inputs and inputs contained in final products lying in stock as on 08-06-2006 as the same was proposed to be cleared without payment of duty under Notification No. 30/2004-C.E., dated 9-7-2004 that they took credit of duty paid on inputs used in manufacture of final products cleared by availing the exemption under Notification No. 29/2004-C.E., from 08-06-2006, and that they were availing benefit of both the

notificaiotn in terms of CBEC circular No. 795/28/2004-CX dt. 28-07-2004 and therefore rebate calim was admissible to them.

9. Government notes that as per Board Circular No. 795/28/2004-CX dated 28-7-2004, the manufacturer can avail both the Notifications No. 29/2004-C.E., and 30/2004-C.E., both dated 9-7-2004 simultaneously provided the manufacturer maintains separate set of accounts for goods in respect of which benefit of Notification No. 29/2004-C.E., dated 9-7-2004 is availed and similarly, for goods in respect of which benefit of Notification No. 30/2004-C.E., dated 9-7-2004 is availed. The C.B.E.C. further issued a Circular No., 845/3/2006-CX., dated 1-2-2007 to further clarify the provision of simultaneous availment of Notification Nos. 29/2004-C.E., and 30/2004-C.E. It was stated that non-availment of credit on inputs is a pre-condition for availing exemption under Notification 30/2004-C.E., dated 9-7-2004 and if manufacturers avail input cenvat credit, they would be ineligible for exemption under Notification 30/2004-C.E., dated 9-7-2004 and therefore proportionate credit on the inputs utilized in the manufacture of goods cleared on payment of duty (under Notification No. 29/2004-C.E., dated 9-7-2004) should be taken at the end of the month only. The orders passed by lower authorities have not discussed as to whether applicant has followed the provisions of said CBEC circulars or not for simultaneously availing both the notifications.

10. During the relevant period, the applicant cleared the goods for export after paying the concessional rate of excise duty @ 4% in terms of Notification No. 29/2004-C.E., dated 9-7-2004 and filed rebate claims under Rule 18 of the Central Excise Rules, 2002. The applicant claimed that they were not availing the cenvat credit on the grey fabrics but were taking the cenvat credit on the chemicals and other raw materials used in the manufacturing/processing of the processed fabrics. Government notes that they were entitled to avail both the Notification 29/2004-CE and 30/2004-C.E., simultaneously in terms of above said CBEC circulars subject to compliance of prescribed procedure. The Commissioner (Appeals) has drawn a conclusion that as the applicants were not claiming the Cenvat Credit on the inputs used in the manufacture of the exported goods, hence they were working under

exemption Notification No. 30/2004-C.E., dated 9-7-2004. Government observes that this conclusion of the Commissioner (Appeals) is based on presumption that applicant was not availing cenvat credit whereas applicant has claimed to have availed cenvat credit. Moreover, the option is with the manufacturer to avail or not to avail cenvat credit on the inputs as the availment of cenvat credit is a beneficial scheme and there is no condition in the Notification No. 29/2004-C.E., dated 9-7-2004 to compulsorily avail cenvat credit on the inputs. There is bar on availment of Cenvat credit under Notification No. 30/2004-C.E., dated 9-7-2004. The applicants claim regarding availment of Cenvat credit is required to be verified from the relevant records. The lower authorities have not considered the said CBEC Circulars which permit availement of both Notification Nos. 29/04-CE & 30/04-CE both dated 09-07-2004, simultaneously subject to compliance of procedure laid down therein. The issue of lapsing of accumulated cenvat credit has to be examined taking into the said CBEC circulars and also the fact that applicant was availing Notification No. 29/04-CE dt. 09-07-2004 since 09-07-04. So, the case is required to be remanded back for consideration in the light of said CBEC circular and observations made in forgoing paras.

11. Therefore, Government sets aside the impugned orders and remands the case back to the original authority for denovo consideration after taking into consideration the above observations. A reasonable opportunity of hearing will be afforded to the parties.

13. The revision applications are disposed in terms of above.

14. So Ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

M/s Silvassa Span Yarn Industries,
Unit-II, Plot No. 3, S. No. 259/1/1,
Navnit Shah Industrial Estate,
Dadra, Silvassa.

ATTESTED

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Order No. 1230-1233/13-Cx dated 09-09-2013

Copy to:

1. The Commissioner of Central Excise, Customs and Service Tax, Vapi, 4th Floor, Adarshdham Building, Vapi Daman Road, Vapi-396191.
2. The Commissioner (Appeals), Customs and Service Tax, Vapi, 4th Floor, Adarshdham Building, Vapi Daman Road, Vapi-396191.
3. The Asstt. Commissioner of Central Excise, Division I SIlvassa, 1st Floor, Sakhar Bhavan, Piparia, Vapi-Silvassa Road, SIlvassa- 396230.
4. PDS Legal, Advocates & Solicitors, 20th Floor, Express Towers, Nariman Point, Mumbai.
5. ~~PS to JS~~ (RA)
6. Guard File.
7. Spare Copy

ATTESTED

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)