195/656-658/10-RA
195/839/10-RA

REGISTERED
SPEED POST

F.No. 195/656-658/10-RA
F.No.195/839/10-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 13.9.17

ORDER NO. 126-129/17-Cx DATED 11-9-2017 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI R.P.SHARMA 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 Orders-In-Appeal No.200-CE/LKO/2010 dated 13.8.2010, 94/CE/LKO/2010 dated 30/04/2010, 95/CE/LKO/2010 dated 30/04/2010 and 117/ST/LKO/2010 dated 29/06/2010 passed by the Commissioner (Appeals), Central Excise, (Lucknow)

Applicant : M/s. Ginni Filaments Ltd.,

Respondent : Commissioner of Central Excise, Lucknow.

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ORDER

The revision applications, details of which are given below has been filed by M/s. Ginni filaments Ltd. (herein after referred to as applicant),

R.A.No.	Order-in-Original No. & Date	Order-in-Appeal No. & Date	Amount involved (in Rs.)
195/839/10-RA	165/Rebate/2009 21/12/2009	200/CE/LKO/2010 13/08/2010	2,05,199/-
195/656-658/10-RA	94/Rebate/2009 31/08/2009	94/CE/LKO/2010 30/04/2010	93,34,173/-
195/656-658/10-RA	95/Rebate/2009 31/08/2009	95/CE/LKO/2010 30/04/2010	16,31,353/-
195/656-658/10-RA	137/Rebate/2009 29/10/2010	117/ST/LKO/2010 29/06/2010	25,93,375/-

2. The common issue involved in all the above mentioned Revision Applications is whether rebate of duty is admissible to the applicant. The original adjudicating authority vide, the above mentioned Order-in-Original, rejected the rebate Claims of the appellant on the ground that the appellant has wrongly paid the duty from CENVAT credit accounts on exported goods despite of availing full exemption from duty under notification no. 30/2004-CE dated 09.07.2004 on the conditions of non availment of Cenvat credit. So, the appellant had paid duty on the exempted goods exported out of India without any authority of law. Adjudicating authority also observed that the appellant cannot claim both the rebate under CENVAT credit Rules, 2002 and Drawback under Drawback Rules, 1995 simultaneously. Further, he also found that there was a different address in Shipping Bill and ARE-1. Being aggrieved by the said Order-in-Original, applicant filed above mentioned appeals before Commissioner (Appeals), who upheld the impugned Order and rejected the appeals. Being aggrieved the appellant has filed the above mentioned revision applications contained detailed ground for revision to challenge the order of Commissioner (Appeals).

3. Personal Hearing in the matter was attended by Shri Dhruv Tiwari, Advocate, on 29.08.2017 and he reiterated the submission already made in their Revision Application. However, no one appeared for the respondent.

4. Government finds that the main issues to be decided in these cases are whether rebate of duty is admissible to the applicant against duty paid on exported goods as claimed in the application or it is correctly denied by the original adjudicating authority and Commissioner (Appeal) for the reasons mentioned above.

5. On examination of all the relevant records, it is clearly noticed that the goods manufactured by applicant have been exported on payment of duty from CENVAT Credit and no doubt has been expressed by any departmental authority about this fact. Main reason cited for rejection of the rebate claim of the applicant by AC, Division and Commissioner (Appeal) is that the applicant was not authorized to pay duty of excise on exported goods as the applicant was eligible for availing full exemption from duty on its product under notification Number 30/2004-CE dated 09.07.2004. The applicant has also not denied this fact and was accepted that they were availing notification No. 30/2004-CE dated 09.07.2004 and not availed any CENVAT credit in respect of input used for manufacturing the exported goods and even in respect of other goods during the relevant time. But the applicant has stated that they had already accumulated CENVAT credit prior to availing the full exemption from duty under notification no. 30/2004 and the same was utilized while clearing the exported goods by paying duty @ 4% as stipulated under notification No. 29/2004-CE dated 09.07.2004 for which there is no legal bar under any notification or any other legal provisions.

6. There is no dispute that the applicant's product i.e. textile goods were covered under both notification no. 29/2004 and 30/2004 and these notifications being independent from each other the applicant had option to avail any of the two notifications and even both could be availed simultaneously in respect of different lots/consignments of the textile goods. When the applicant availed full exemption from duty in respect of all or some textile goods under notification no. 30/2004 it is beyond

any doubt that the applicant could not avail CENVAT credit of input used in relation to such goods and if they availed CENVAT credit the applicant was not eligible from full exemption from duty under the said notification no. 30/2004. But the department's case against the applicant is not that the applicant has wrongly availed full exemption from excise duty in respect of its final product and at the same time they availed CENVAT credit on the inputs for use in manufacturing the same finished product. Had it been so, department should have denied the full exemption from duty availed by the applicant and demanded Central Excise duty at the rate applicable to their product which is 4% as per notification no. 29/2004. But there is no allegation from lower authorities that the applicant has wrongly availed exemption under Notification no. 30/2004.

7. As regards the issue whether the applicant has committed any error by paying duty of excise on exported goods, it is already stated in above para that the applicant had option to pay duty under notification no. 29/2004 and was not bound to avail notification no. 30/2004 only. Since the applicant has opted to pay duty on exported goods under notification no. 29/2004 by utilizing CENVAT Credit already available with them, no legal error can be attributed to the applicant. It is also not the case of lower authority that CENVAT credit was not legitimately earned by the applicant prior to opting for notification no. 30/2004. Since the applicant has undoubtedly exported the goods on payment of Central excise duty and no contravention of any other condition stipulated in Rule 18 of Cenvat Credit Rules, 2002 and notification no. 19/2004-ce (NT) has been alleged against the applicant in the case, rebate of duty is admissible to the applicant.

8. The other reason given for rejection of rebate claim that the applicant also availed Drawback of duty is also not found maintainable as the above mentioned Rule 18 and notification no. 19/2004 does not have any such condition that in the event of claiming DBK of duty, rebate of duty of excise paid on exported goods will not be allowed. Moreover, in the instant case drawback of duty has been claimed in respect of inputs used by the applicant in the exported goods and no drawback of duty has been

availed in respect of the fully finished exported goods. Thus the applicant has not availed the double benefit of drawback of duty and rebate of duty for the same stage.

9. Third ground adopted by the jurisdictional Central excise authority for rejection of the applicant rebate claim is that address of corporate office has only been mentioned in Shipping Bill while factory address is given in ARE-1 is also found to be too technical and even flimsy. The jurisdictional Central excise authorities have conveniently overlooked the vital fact that relevant Shipping Bill is mentioned in the certificate of the Customs officer on the back of each ARE-1 from which the relationship of the goods cleared from factory of the applicant with exported goods under Shipping bill is very clearly established. Thus, no doubt is left that the goods cleared by applicant under ARE-1 have been exported in all the cases and the rebate of duty can not be refused just on the ground that Corporate office's address has been mentioned in Shipping bill as consignor and the factory address is not mentioned therein.

10. In view of the above facts and discussions, the grounds of revision advanced by the applicant in their revision applicant are found acceptable and accordingly Government set aside the Commissioner (Appeal's) orders as mentioned above and all the revision application filed by the applicant are allowed.

11-9-17

(R.P.SHARMA)
(Additional Secretary to the Government of India)

M/s. Ginni Filaments Ltd.,
110 KM Milestone,
Delhi Mathura Road,
Chhata-281401

Order No. /17-Cx dated 2017

Copy to:-

1. The Commisioner Customs & Central Excise, &-A, Ashok Marg, Lucknow.
2. The Commissioner (Appeals), Customs & Central Excise, Hall No. 2, 8th Floor, Kendriya Bhawan, Sector-8, Aliganj, Lucknow
3. The Assistant Commissioner, Central Excise Division, Masood Mahal, Lal Diggi Road Aligarh-202001
4. Shri V. Lakshmi Kumaran, Advocate, B-6/10, Safdarjung Enclave, New delhi-110029
5. PS to JS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED

(Ravi Prakash)
OSD (RA)