

SPEED POST



F.No. 195/56/2019-R.A.,
195/58/2019-R.A.,
195/59/2019-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. 01.07.21..

Order No. 153-155/2021-CX dated 01-07-2021 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 Orders-i-Appeal nos CHD-EXCUS-001-APP-109-2019-20 dated 30.07.2019, CHD-EXCUS-001-APP-111-2019-20 and CHD-EXCUS-001-APP-112-2019-20, both dated 01.08.2019, passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicants : M/s Arisht Spinning Mills, Baddi, Distt. Solan.
M/s Auro Weaving Mills, Baddi, Distt. Solan.
M/s Vardhman Spinning Mills, Baddi, Distt. Solan.

Respondent : Commissioner of CGST, Shimla.

ORDER

Three revision applications nos. 195/56/2019-RA dated 06.11.2019, 195/58/2019-RA dated 04.11.2019 and 195/59/2019-RA dated 06.11.2019 have been filed by M/s Arisht Spinning Mills, M/s Auro Weaving Mills and M/s Vardhman Spinning Mills (here-in-after referred to as the Applicants), respectively, against Orders-in-Appeal Nos. CHD-EXCUS-001-APP-109-2019-20 dated 30.07.2019, CHD-EXCUS-001-APP-111-2019-20 and CHD-EXCUS-001-APP-112-2019-20 both dated 01.08.2019, respectively, passed by the Commissioner (Appeals), CGST, Chandigarh.

1.2 All the three Applicants are sister concerns and units of M/s Vardhman Textiles Ltd. Since the issue involved in all the above 3 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 Cotton Yarn/Fabric under Chapter 52 and 55 of the Central Excise Tariff Act, 1985. The finished goods were exported under claims of rebate, amounting to Rs. 29,86,196/- (M/s Arisht Spinning), Rs. 7,53,490/- (M/s Auro Weaving) and Rs. 1,17,71,355/- (M/s Vardhman Spinning), of duty paid on export goods, under Rule 18 of Central Excise Rules, 2002. Subsequently, rebate claims were filed by the Applicants which were rejected by the original authority on the ground that higher rate of drawback had been claimed by the Applicants and as such grant of rebate of excise duty would amount to double benefit. However, the original authority permitted re-credit

of the CENVAT credit on capital goods, which was used to pay duty on the export goods. On review, it was found that re-credit of the rejected amounts could not be allowed to the Applicants as there was no such provision of allowing the re-credit under Rule 18 of the Central Excise Rules, 2002 which stipulates that rebate can either be sanctioned or rejected and there is no third provision. Subsequently, the demands for recovery of the re-credited amounts were confirmed vide Orders-in-Original Nos. 09/CE/JC/SML/2018-19 dated 11.06.2018 (M/s Arisht Spinning), 08/CE/JC/SML/2018-19 dated 31.05.2018 (M/s Auro Weaving) and 07/CE/JC/SML/2018-19 dated 31.05.2018 (M/s Vardhman Spinning), passed by the Joint Commissioner, CGST, Shimla. The appeals filed by the Applicants were rejected by the Commissioner (Appeals).

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 that they should have been paid rebate amount in cash and not as re-credit as allowed by the original adjudicating authority. It is further contended that the Commissioner (Appeals) had relied upon the Government's Order No. 588-609/18-CX dated 12.11.2018 in the case of M/s Vardhman Spinning and that

Hon'ble Himachal Pradesh High Court had, vide Order dated 15.05.2019, granted status quo in respect of the rebate claim earlier allowed.

4. Personal hearing was held on 24.06.2021, in virtual mode. Sh. Rupender Singh, Advocate, appeared for the Applicants which are sister Units of Vardhman Group, and stated that the issue involved in these three cases is same. Hence, they may be heard and disposed of together. He reiterated the contents of the revision applications and requested that the compilation e-mailed on 23.06.2021 may be taken on record. He submitted that:

(i) The basic issue involved, i.e., whether higher rate of drawback and rebate of duty paid can be availed simultaneously has already been held against them by the Government.

(ii) Present revision applications relate to parallel proceedings initiated to recover the amount of CENVAT credit allowed to be re-credited by the original authority, under Section 11A of the Central Excise Act, 1944. The said Section does not permit demand or recovery of such re-credit. This contention was raised by them before the lower authorities but they have not recorded any findings on this aspect. As such, the matter may be remanded to the original authority for examination on merits.

(iii) Government is unjustly enriched in the matter in as much as the rebate of duty paid has been denied and the re-credit allowed is also being recovered. In case they would have exported under bond, duty was not payable. Therefore,

following the ratio of the case of IOCL Vs CCE, New Delhi [2010(256) ELT 232(P&H)], re-credit should not be denied.

(iv) Re-credit of duty paid from CENVAT account has not been specifically provided for but the judicial and quasi-judicial authorities have been doing so in appropriate cases. He relied upon Government's decision in the case of Evershine Polyplast Pvt. Ltd. [2012(278) ELT 133((GOI)] in tis regard.

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 Applicants' revision applications against Commissioner (Appeals)'s Orders upholding the orders of the original authority, vide which the rebate claims had been rejected on the ground of basic issue involved, i.e., according double benefit to the Applicants if both drawback and rebate are sanctioned, had culminated into GOI's Order No. 588-609/18-CX dated 12.11.2018, in the case of M/s Vardhman Spinning Mills and GOI's Order No. 05-17/2021-CX dated 28.01.2021, in the cases of M/s Arisht Spinning Mills and M/s Auro Spinning Mills, wherein the Government has rejected the revision applications. Order dated 12.11.2018 has been challenged before the Hon'ble Himachal Pradesh High Court in CWP No. 1042 of 2019. The Hon'ble High Court has, vide Order dated 15.05.2019, directed issue of notice and that "*Meanwhile status quo re: refund of the amount be maintained, subject to the petitioner's furnishing adequate*

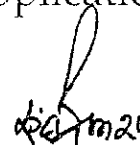
security to the satisfaction of respondent No. 2." Thus, there is no stay in respect of the Order dated 12.11.2018. Further, the Applicants have not brought on record any challenge against the Order dated 28.01.2021. As such, both these Orders, i.e., GOI's Orders dated 12.11.2018 and 28.01.2021 hold the field.

5.2.1 In the present proceedings, the only issue which is stated to be outstanding is whether having rejected the rebate claim the re-credit of duty could have been allowed in the CENVAT account. The Government observes that this issue has also been specifically considered and decided, vide the GOI's Order dated 28.01.2021, in following terms:

"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."

5.2.2 Since the re-credit could not have been allowed, the recovery of re-credit allowed erroneously, in terms of Section 11A of the Central Excise act, 1944, cannot also be faulted.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

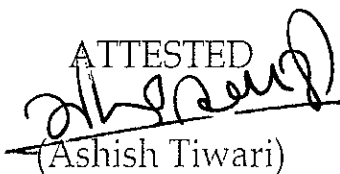
1. M/s Arisht Spinning Mills (Unit of Vardhman Textiles Ltd.)
Sai Road, Baddi, District Solan (HP)-173 205
2. M/s Auro Weaving Mills (Unit of Vardhman Textiles Ltd.),
Sai Road, Baddi,
District Solan (HP)-173 205
5. M/s Vardhman Spinning Mills (Unit of Vardhman Textiles Ltd.),
Sai Road, Baddi,
District Solan (HP)-173 205

G.O.I. Order No. 153-155/21-CX dated 1-7-2021

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. Encl. file.
6. Spare copy.

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)