

REGISTERED
SPEED POST



F.No. 198/85/2015-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.. 4/4/18..

ORDER NO. 163/2018-CE dated 2-4-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA, PRINCIPAL-COMMISSIONER & ADDITIONAL
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER Section 35EE OF THE CENTRAL
EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35EE of the Central
Excise Act, 1944, against the Order-in-Appeal No. 344-
352(SLM)CE/JPR/2015 dated 18.05.2015, passed by the
Commissioner of Central Excise (Appeals), Jaipur.

APPLICANT : Commissioner of Central Excise, Udaipur.

RESPONDENT : M/s. Sangam India Ltd. (Denim), Rajasthan

ORDER

A Revision Application 198/85/2015-R.A. dated 01.09.2015 has been filed by the Commissioner of Central Excise, Udaipur(hereinafter referred to as Applicant) against the Order—In—Appeal No. 344-352(SLM)CE/JPR/2015 dated 18.05.2015, passed by the Commissioner of Central Excise (Appeals), Jaipur, whereby the appeal of the respondent, M/s Sangam India Ltd.(Denim), Bhilwara, has been allowed and the Order of the Assistant Commissioner rejecting the rebate claims of the respondent has been set aside.

2. The Revision Application has been filed mainly on the grounds that after the respondent had opted for Notification No.30/2004 CE dated 09.07.2004, Central Excise duty on the exported goods was not payable and the duty paid on the exported goods from the CENVAT Credit account could not be considered as payment of duty for the purpose of granting of rebate of duty under Rule 18 of Central Excise Rules. On the other hand, the respondent has pleaded that they had opted to avail Notification No. 30/2004 for domestic clearances and Notification No. 29/2004 CE dated 09.07.2004 for the exported goods and there is no legal bar to avail the both notifications simultaneously.

3. A Personal hearing was held on 22.03.2018 and it was availed by Shri Anil Rathee, CA, for the respondent who reiterated their defense contentions already advanced in their reply dated 16.10.2015. In addition, he also placed reliance on Government of India's Order No.267-271/17-Cx dated 06.11.2017 to support their case. However, no one appeared for the applicant and even no request for any date of hearing is made from which it is implied that the applicant is not interested in availing in personal hearing.

4. The government has examined the matter and it is observed at the outset that the Revision Application has been presented after one day's delay and it is requested to be condoned on account of re-organization of the Commissionerate in 2014 and consequent massive shifting of office records and officers thereafter. This reason is found to be genuine and accordingly one day delay is condoned.

5. Coming to the merit of the case, 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 both 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

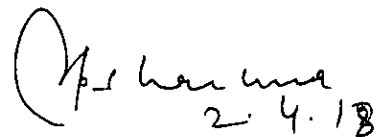
input used in relation to such goods and if they availed CENVAT credit the applicant was not eligible from full exemption from duty under the said Notification no. 30/2004. But the department's case against the applicant is not that the applicant has wrongly availed full exemption from excise duty in 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.

6. 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 the applicant 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 and it cannot be decided on the ground that it was their modus operandi to encash the accumulated credit. The applicant's reliance on Punjab & Haryana High Court's decision in the case of M/s Nahar Industrial Enterprises Ltd. {2009(235) ELT(P&H)} is completely misplaced as the issue involved in this decision was entirely different from the present proceeding. While in the case of M/s Nahar Industrial Enterprises Ltd. the issue was whether rebate of duty could be allowed against payment of duty at the tariff rate despite effective rate of duty was much lower under Notification No. 29/2004, the present proceeding has the issue regarding rebate of duty against Central Excise duty paid at the concessional rate only. As regards other decision of Rajasthan High Court in the case of RSWM Ltd., Banswara, the applicant has not properly articulated its relevance for the present case. Third ground of revision that Commissioner(Appeal) has not specified whether rebates are admissible in cash or in credit is outrightly misconceived in the light of CBEC's Circular No. 687/3/2003 CX dated 03.01.2003 whereby it is clarified that the rebate

of duty is to be paid in cash only. Even the Government of India in its order No. 267-271/17 CX dated 06.11.2017 has held so.

7. In view of the above discussions, the government does not find any fault in the Order of Commissioner(Appeal) and the Revision Application is rejected.


2.4.18

(R.P.Sharma)

Additional Secretary to the Government of India

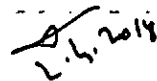
The Commissioner of Central Excise, Udaipur,
142-B, Hiran Magri, Sector-11, Near Shahi Bagh,
(Rajasthan)

ORDER NO. 163/18-CE dated 2-4-2018

Copy to: -

1. M/s Sangam India Ltd.(Denim), Village Biliya Kalan, Chittor Road, Bhilwara-311001, (Rajasthan).
2. The Commissioner of Customs & Central Excise(Appeals); NCR Building, C-Scheme, Jaipur-302005.
3. The Deputy Commissioner of Central Excise and Service Tax, Division-Bhilwara, 10, Azad Nagar, Near Pannathay Circle, Bhilwara, Rajasthan.
4. PA to AS(RA)
5. Guard File
6. Spare copy

ATTESTED


2.4.2018

(Debjit Banerjee)
S.T.O. (R.A. Unit)