REGISTERED
SPEED POST

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 198/52/WZ/2017-RA 1760 Date of Issue: 27.03.2023

ORDER NO. 169 /2023-CX(WZ)/ASRA/MUMBAI DATED 27.03.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of CGST, Nagpur -I.

Respondent : M/s. Spentex Textiles Limited

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal NGP/EXCUS/000/APPL/183/17-18 dated 11.07.2017 passed by the Commissioner (Appeals), GST & CX, Nagpur.

ORDER

1. This Revision Application has been filed by the Commissioner of CGST, Nagpur-I (hereinafter referred to as "the Applicant-Department") against the Order-in-Appeal (OIA) No. NGP/EXCUS/000/APPL/183/17-18 dated 11.07.2017 passed by the Commissioner (Appeals), GST & CX, Nagpur.

2. Brief facts of the case are that M/s. Spentex Textiles Limited (hereinafter referred to as "the Respondent") is engaged in manufacture of Polyester Cotton Blended Yarn, Polyester Blended Viscose falling under chapter 55 of the Central Excise Tariff Act, 1985. They had filed 21 rebate claims under Rule 18 of the Central Excise Rules,2002 for the rebate of duty paid on raw materials totally amounting to Rs.33,22,184/- used in the manufacture of exported goods. The Rebate sanctioning authority rejected the rebate claims vide Order-in-Original (OIO) No. 58-78/REB/Dn.BT-II/2016-17 dated 24.10.2016. Aggrieved, the Respondent filed an appeal, which was allowed by the Commissioner (Appeals) vide impugned OIA.

3.1 Hence, the Applicant-Department has filed the impugned Revision Application mainly on the following grounds:

a) The factual position is that during the entire proceedings of adjudications and appeals carried out in the journey of impugned rebate claims, the respondent nowhere submitted the duplicate copies of input invoices. In their original application dt.07.12.2004 the respondent had clearly mentioned in point no.7 that "Original copy of the duplicate invoice will be provided as and when required". It clearly demonstrates that the respondent had not submitted the original copy of the duplicate invoice.

b) As per Section 11B, it is clear that the claimants are required to file specified documents along with refund claim to justify their refund/ rebate claimed amounts. The Central Excise Act, 1944 & Rules made there under clearly specify that for claiming rebate of inputs certain procedures/instructions is to be adopted.

c) The instruction for processing the rebate claim and the list of documents to be filed along with the rebate claim has been prescribed in Chapter 8 of the Supplementary Instructions of CBEC's Excise Manual. Part-V of Chapter 8 specifies the procedures and conditions necessary for claiming rebate of duty paid on the inputs meant for manufacture or processing of goods meant for export.

d) Additionally the CBEC website at 'www.cbec.gov.in' under the head: public Information has uploaded the List of documents to be filed with refund/rebate claim for Central Excise.

e) On perusal of the texts and relevant instructions, it cannot be said that non-submission of prescribed documents is merely a procedural lapse. The Commissioner (Appeals) has not observed/mentioned anything contrary w.r.t. compliance of statute and has not negated vital part of the order passed by the lower authority by not offering any comments on the statue and citations of the case laws relevant in the matter.

f) The Hon'ble Tribunal in the case of M/s. Hindustan Coca Cola Beverages Pvt. Ltd. Versus Commissioner of C. Ex., Pune-III reported as 2011 (266) E.L.T. 266 (Tri. - Mumbai) observed that, *"5.In the facts and circumstances of this case it is admitted fact that original invoice has been misplaced and same has not been produced before the lower authorities, which is a mandatory requirement to sanction the refund claim. Hence, I do not find any infirmity with the impugned order wherein the lower appellate authority has rightly rejected the refund claim for non-production of original invoice which is a necessary document to sanction the refund claim. Accordingly, I do not find any merit in the appeal, the same is rejected."*

g) The case law cited supra squarely covers the situation of impugned rebate claims and thereby rightly applicable. Moreover, the respondent falls under the jurisdiction of the Tribunal West Zone, Mumbai. Hence the verdict is binding on the authorities coming under the jurisdiction of said Tribunal and therefore in taking a decision

without taking cognizance of the decision supra, the appellate authority violated the judicial discipline principle.

h) In view of the aforesaid case law, it is mandatory on the respondent's part to submit the invoices in original to claim the Rebate of duty paid on Inputs allowed by the Hon'ble Supreme Court. The Apex court has decided the case on merits in favour of the respondent as much as to allow the rebate of duty paid on inputs consumed in exported goods. However, the respondent is bound to comply with the procedure prescribed for claiming Rebate. Submission of invoices in original is an integral and mandatory part of the said procedure. The same shall be strictly complied with which has thoroughly been discussed in the case of CCE Vs. Hari Chand Shri Gopal reported as 2010 (260) E.L.T. 3 (S.C.).

i) Further, it is also an equally settled position that every word of a statute have to be given full effect to, as held by the Hon'ble Apex Court in the case of Balwant Singh v. Jagdish Singh [2010 (262) E.L.T. 50 (S.C.)].

j) The Hon'ble Apex Court in the case of Indian Oil Corporation Ltd. Versus Commissioner of C.Ex., Vadodara in the para 6 held that "*...a provision for exemption, concession or exception, as the case may be, has to be construed strictly and (f the exemption is available only on complying certain conditions, the conditions have to be complete with in the aforesaid decision, the Constitution Bench further held that detailed procedure have been laid down In Chapter X of the Rules so as to such the diversion and utilization of goods which are otherwise excisable and the plea of substantial compliance or intended use therefore has to be rejected.*" The verdict of the Hon'ble Tribunal supports the view of lower adjudicating authority.

k) Further, Hon'ble High Court of Karnataka in the case of Shell India Ltd. Vs. CCE, Bangalore reported in 2012 (28) S.T.T. 87 (Kar.) has held as under:-

In other words, it is not only necessary to verify that a particular kind of input service is consumed for providing a particular kind of output

service but it is necessary to ensure that the eligible service received under various invoices have actually gone into consumption for providing the exported output service in question and not utitised for other purposes. In light of the Hon'ble High Court's decision, the verification of input invoices and input output ratio is necessary to decide the quantum of admissible amount of refund.

l) The responsibility requirement of submission of original documents and input-output norms lies with the respondent, as held by the Hon'ble Supreme Court in the case of M/s B.P.L. Ltd. Versus Commr. of C.Ex., Cochin-II reported as, 2015 (319) E.L.T. 556 (S.C.) wherein it was held in para 18 that, "*It is trite that strict interpretation is to be given to the exemption notification and it is upon the assessee to approve that he fulfils au the conditions of eligibility under such Notifications.*"

m) Looking into the circumstances of the case, it can be seen that the time and again the show cause notices were issued in the interest of public revenue. Since the huge amount of revenue involved in the case, the revenue authorities are supposed to take all reasonable steps before arriving at a conclusion. In the instant case, being an input stage rebate the quantum of rebate amount can only be ascertained on the basis of availability of duplicate invoices in original, input-output norms. Mere sample checking of documents done by the Appellate authority will not suffice to quantify the rebate amount. It can only be helpful to decide the issue but quantification cannot be done without supplying the documents in original and input-output norms. The requirement of the documents in original is much more essential in the instant case, as the predecessor who has filed the rebate claims was M/s Indorama Textile India Ltd., Nagpur which subsequently merged into M/s Spentex Industries Ltd, the present claimer. The computation of rebate amount to be sanctioned has to be just, genuine and correct. This can only be possible if the original documents and input-output norms are available.

n) The observation of the Commissioner (Appeal) that the refund had been rejected by the adjudicating authority by raising fresh grounds is completely incorrect in the context of the present case. It can be observed from the chronological history of the case that at no earlier point of time did the refund sanctioning authority examine the satisfaction of the conditions for grant of rebate on inputs. Such examination had neither been required nor had it been necessitated because the rebate on inputs had consistently been held to be inadmissible in law itself.

o) It was only after the said judgement of the Hon'ble Apex Court that the occasion arose for the first time before the adjudicating authority to examine whether the claim for rebate on inputs satisfied the mandatory prescribed conditions. Prior to this judgement, as mentioned above, the claim of rebate on inputs had been held to be inadmissible in law itself. In cases where a claim for rebate for rebate or refund is held to be legally inadmissible, there is no necessity to simultaneously treat the said claim hypothetically as a legally admissible claim and then proceed to examine it with respect to the mandated conditions.

p) It is also significant to observe that the Hon'ble Apex Court had merely laid down the position of law with respect to admissibility of rebate on the final products and rebate on inputs at the time. This judgement, at no place, held that even if legally admissible, rebate of either kind can be given in violation of the statutory conditions. Therefore, if a claim which was earlier held to be legally inadmissible, becomes legally admissible in view of a subsequent judgement, the said claim is then still required to be tested for the satisfaction of the prescribed conditions. Upon such testing, if the claim is found wanting, it cannot be said that the grounds of rejection are fresh grounds which should have been raised at the initial stage itself.

q) While holding that no CENVAT credit had been availed by the Respondent on the inputs, the Commissioner(Appeals) appears to have completely lost sight of the fact that it has been established in

this case that the Respondent had availed CENVAT credit on packing materials, Taking cognizance of this availment of CENVAT credit, the JS(RA) had also directed that the quantum of CENVAT credit availed on packing materials should be deducted from the rebate claim found liable to be sanctioned. The Respondent has not been able to obtain any decision overturning this direction and, thus, this direction has attained finality.

r) These facts have been duly mentioned in Para 33 of the Order-in-Appeal but the Commissioner(Appeals) has neither computed the CENVAT credit availed on packing materials, nor has he deducted the said credit from the rebate claimed on inputs. Therefore, the said Order-in-Appeal does not appear legal or proper on this ground also.

In the light of the above submissions, the Applicant-Department prayed to set aside the impugned order-in-appeal.

3.2 The Respondent has filed written submissions mainly on the following grounds:

a. the Revision Application has been filed with a predetermined and biased mind and the issue has already been prejudged against the Respondent. Under these circumstances, it would be difficult for the present adjudicating authority to drop the proceedings on merits even when the Respondent proves beyond any doubt that the rebate sanctioned to the Respondent is legally correct.

b. It is submitted that the statements made at various places in the Revision Application clearly reflect a biased approach of the Department against the Respondent and gives an impression that the issue has been prejudged and pre-determined against the Respondent. Therefore, in the light of the judgments cited below, it is submitted that the Revision Application is liable to be dismissed on this ground alone:

- Siemens Ltd. v. State of Maharashtra, 2007 (207) ELT 168 (SC)
- Oryx Fisheries Pvt. Limited v. Union of India, 2011 (266) ELT 422 (SC)
- SBQ Steels Ltd. v. CCE&ST, Guntur, 2014 (300) ETL 185 (A.P.)

- Narinder Singh Arora v. State Govt. of NCT of Delhi, 2012 (283) ELT 481 (SC)
- State of W.B. v. Shivananda Pathak, (1998) 5 SCC 513
- Jindal Drugs Ltd. v. Union of India, 2008 (223) ELT 561 (Bom.)
- Union of India v. Kamlakshi Finance Corporation, 1991 (55) ELT 433 (SC)

c. As already submitted, the original rebate claims dated 07.12.2004 filed by the Respondent were rejected by the adjudicating authority vide Order-in-Original dated 28.01.2005, solely on the ground that rebate of duty paid on the inputs used in exported goods and the duty paid on the exported finished goods could not be granted simultaneously and no other objection apart from this was raised against the Respondent, seemingly because rest of the things were found to be in order.

d. It is pertinent to note that the sole point of objection of the Department with regard to claims dated 07.12.2004 was settled in the favour of Respondent by Hon'ble Supreme Court vide judgment dated 09.10.2015. Therefore, after the order of the Hon'ble Supreme Court, the ideal course of action of the Department should have been to follow the order of the Hon'ble Supreme Court and grant the rebate claim to the Respondent. However, the Department, instead of following such orders, by issuing the impugned SCN has attempted to reopen the issue by raising the grounds which were not even a part of the original objections.

e. The Respondent submits that, filing of Revision Application by the Department and consequential reopening of the assessment of rebate by the Department is improper and therefore, the Revision Application is liable to be dismissed. In support of the above proposition, the Respondent places reliance on the CBEC Circular No. 510/06/2000-CX dated 03.02.2000, wherein it has been clarified that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of the duty paid on goods covered by the claim. Board has also clarified that if the rebate sanctioning authority has reasons to believe that duty has been paid in excess than what should have been paid, he shall inform

the jurisdictional Assistant/ Deputy Commissioner, after granting the rebate.

f. In the above clarification issued by the Board, it has been explicitly made clear that the rebate sanctioning authority should not examine the correctness of assessment made by the Range officer on ARE1 at the time of export but should examine only the admissibility of rebate of the duty paid on goods covered by a claim. It has also been clarified that in case duty has been paid in excess of what should have been paid, then the rebate sanctioning authority shall grant the rebate and inform the jurisdictional Assistant/ Deputy Commissioner for scrutinizing the assessments made by the assessee and take actions wherever necessary. From the aforesaid circular issued by the Board, it is evident that the rebate sanctioning authority does not have the power to reassess the rebate amount on any premise without challenging the assessments made by the assessee in the ARE-1s for export consignment.

g. The following decisions also support the submission that a mere procedural lapse cannot take away a substantive benefit:

h. Reliance in this regard is also placed on the recent decision of the Hon'ble Tribunal in the case of Rites Ltd. v. CST, Delhi, 2016-TIOL-646-CESTAT-DEL. In this case, the refund claims which were initially rejected by the Ld. Deputy Commissioner were allowed by the Ld. Commissioner (Appeals). Instead of complying with the order of the Ld. Commissioner (Appeal), the Ld. Deputy Commissioner issued a show cause notice and denied refund, raising fresh ground of refund being barred by limitation and the same was also upheld by the Ld. Commissioner (Appeals). However, the Hon'ble Tribunal allowed the appeal filed by tile appellant and imposed cost on the Ld. Deputy Commissioner.

i. Therefore, in view of the foregoing, the Respondent humbly submit that the filing of the Revision Application shall amount to re-assessment of the claim of Respondent which is against the settled law. Further, the Revision Application is also violation of judicial

discipline as the issue has already been decided in the favour of the Respondent by Hon'ble Supreme Court and therefore, the Revision Application is liable to be dismissed.

j. The Respondent humbly submits that the filing of the Revision Application by Commissioner against the Order-in-Appeal to set aside the said Order-in-Appeal amounts to review of the said order and such review is ultra vires to the powers of Ld. Assistant Commissioner.

k. It is humbly submitted that Ld. Assistant Commissioner had sanctioned the rebate claim of the Respondent for the amount of Rs. 71,48,508/- along with interest by following the Order-in-Appeal dated 11.07.2017 vide its Order-in-Original dated 25.09.2017. However, subsequently, without any change in the facts and the circumstances of the case, Commissioner has file this RA seeking to set-aside said Order-in-Appeal. And therefore, the Revision Application is liable to be dismissed

l. The Respondent, in this regard, places reliance on the decision of Commissioner of Customs v. Millat Fibers, 2011 (271) ELT 512 (Guj.). and recent order of Hon'ble CESTAT in the case of TVS Motors co. Ltd. v. CCE & ST, 2017 (5) GSTL 85 (Tri. Bang.).

m. The Respondent humbly submits that akin to the facts of the aforementioned cases, in the present case also the Commissioner, by Revision Application, has attempted to review departments own decision. However, being a quasi-judicial authority, it is devoid of such powers and therefore, the Revision Application is liable to be dismissed.

n. The Respondent humbly submits that the present RA under the Central Excise Act, 1944, being judicial in nature, are amenable to the principle of res judicata and thus, in the light of unchanged facts and circumstances from the Order-in-Appeal dated 11.07.2017, the same are liable to be dismissed. The Respondent, to strengthen this submission, places reliance on the decision of Hon'ble Bombay High Court in the case of Voltas Ltd. v. Union of India, 2014 (305) ELT 545 Bom

o. The Respondent submits that the principle of res judicata is the embodiment of the conclusiveness of an order. It states that once, in a given set of facts and circumstances, the points either of fact, or of law, or of fact and law have been decided, then the same cannot be reopened in a subsequent litigation by either of the parties.

p. The Respondent submits that in the present case, the issue pertaining to the admissibility of the rebate had already been decided by the Ld. Assistant Commissioner in the favour of the Respondent vide Order-in-Original dated 25.09.2017. Such an order was passed after verification and scrutiny of all the relevant factors and documents. However, without any change in any of the relevant facts of the case, the Department has attempted to reopen and re-agitated the issue already decided by the lower authority i.e. jurisdictional Assistant Commissioner by filing this Revision Application. The Respondent submits that such reopening of the issue cannot be permitted and the same shall remain barred by the application of principle of res judicata.

q. It is submitted that though the Department is in appeal against the Order-in-Original dated 25.09.2017, the matter is still pending and the Order-in-Original dated 25.09.2017 has not been stayed and thus, the Respondent submits that since all the relevant factors from the time of passing Order-in-Original dated 25.09.2017, which is still in operation, have remained as they were before, there is no conceivable reason as to why such Order-in-Original dated 25.09.2017 should be disturbed and legal sanctity of the order should be violated. Therefore, it is submitted that the principle of res judicata being applicable, the present proceedings are liable to be dropped and the impugned SCN is liable to be quashed.

r. The Respondent humbly submits that the Commissioner vide the Grounds of Appeal mentioned in the Revision Application, has raised doubts as to the legality of sanctioning of rebate to the Respondent on the ground that the original copies of the duplicate invoices of inputs on which the rebate was sought from the Respondent were not

submitted by the Respondent. The Respondent submits that such a ground raised by the Department in the Part-A of the Revision Application completely baseless and is in ignorance of the facts of the case.

s. It is submitted that as pointed out in the Revision Application ground of Appeal at para 1 of Part-A, the Respondent had undertaken to provide the original copies of the duplicate invoices of inputs as and when required while filing its first disputed claim dated 07.12.2004. And contrary to the inference drawn from such statement by the Department, the Respondent, in reality, did provide all the required documents. Reference in this regard is made to the letter dated 01.12.2005 whereby Original for Buyer and Duplicate for Transporter Copies of 74 invoices were submitted, letter dated 08.03.2006 whereby Original for Buyer and Duplicate for Transporter Copies of 209 invoices were submitted and letter dated 20.04.2006 whereby Original for Buyer and Duplicate for Transporter Copies of 300 invoices were submitted by the Respondent. The said letters also duly bear the stamp of the Department evidencing the receipt of the same.

t. Therefore, the Respondent submits that the allegation of the Department in the Revision Application that the required documents were not submitted is completely baseless. The Respondent further submits that the documents submitted by the Respondent vide the aforementioned letters were originals and thus, could only be submitted once. However, the Department, acting against such commonsensical understanding, has raised a demand for submission of such documents again. The Respondent submits that said documents cannot possibly be resubmitted in original as they have already been provided to the Department and also, once the Department is in receipt and possession of such documents, as evidenced by the abovementioned letters, the duty is on the Department to maintain the said original documents in the most proper manner and the Respondent should not be punished for the negligent handling of the said documents by the Department.

u. It is further submitted that a substantial time of 12 years has elapsed since these documents were first provided by the Respondent to the Department and the Respondent, after such a long time, cannot reasonably be expected to still have copies of the said documents. Also, it is pertinent to note that after the submission of the abovementioned letters to the Department, a fire had broken out at the premises of the Respondent due to violent labour unrest in which a large amount of property including furniture and documents belonging to the Respondent were lost. Therefore, it is submitted that the allegation made by the Department against the Respondent vide the Grounds of Appeal of Revision Application is devoid of any substance and the Respondent cannot be expected to submit the said documents again. And therefore, the Revision Application is liable to be dismissed.

v. The Respondent submits that vide Part B and Part C of the Revision Application, the Department has objected to the legality of the sanctioning of the rebate claim of the Respondent on the ground that the grounds adopted in the Order-in-Original dated 24.10.2016 for rejection of the Respondent's rebate claim could not be called fresh grounds and that the non-availment of Cenvat credit by the Respondent on the invoices on which rebate was sought could not be proven.

w. The Respondent submits that both grounds adopted by the Department are frivolous and lack any substance. It is submitted that it is settled position that when an application is submitted by an assessee for refund/ rebate etc., the appropriate authority is required to evaluate such claim in its entirety and point out to the short comings which might exist. Such evaluation, in the interest of expediency and justice, cannot be made in a piecemeal manner wherein one objection is raised at one stage and the other is raised at a later stage. The said position also finds resonance in multiple Circulars which have been issued by CBEC* from time to time, noteworthy being Circular No. 24/2007-Cus. dated 02.07.2007 and Circular No. 22/2015-Cus.dated 03.09.2015 wherein it was stated

that genuine clarification sought by officers from importers/ exporters are to be raised in one go and not in piecemeal manner.

x. The Respondent submits such Circulars being binding on the officers of the Department, the officers are duty bound to abide by such Circulars. Meaning thereby, it can safely be inferred that when the Respondent had filed its first claim in 2004, such claim was scrutinized in its entirety and whatever objections were required to be raised were duly raised at that time only. Otherwise, the appropriate authority scrutinizing such claim can be held to be in dereliction of his/ her duties {rising out of the binding Circulars. Therefore, it is submitted that in all possibilities, the only objection which the authority scrutinizing the Respondent's rebate claim found was regarding Rule 18 of the Central Excise Rules, 2002 which has already been settled in the favour of the Respondent by Hon'ble Supreme Court. Hence, it is submitted that the Department, after going through multiple rounds of litigation, cannot be allowed to raise any ground which was previously not taken as the officers were duty bound to raise any and all objections at a much prior stage.

y. In view of the above, the Respondent humbly submits that the observation of Ld. Commissioner (Appeals) in the Order-in-Appeal dated 11.07.2017 regarding raising of new grounds is correct and the instant Revision Application is liable to be discharged in totality.

z. The Respondent further submits that in support of its claim of non-availment of Cenvat credit, the Respondent had already submitted Hard Copies & Soft copies of the Purchase Register and copies of RG-23A Part-II registers for the relevant period to the Original Adjudicating Authority as well as to the Commissioner (Appeals) at the time of Personal Hearings. The factum of such submission has also been recorded at para 31 of the Order-in-Original dated 24.10.2016. However, the same were brushed aside by the adjudicating authority without scrutiny, only on the ground that the original invoices were required for such verification. Detailed submissions with regard to

original documents have already been made in the preceding paragraphs.

aa. The Respondent submits that the only way in which the Respondent could have availed Cenvat credit is by way of recording the details in RG-23A Part-II register. However, since no entry, with regard to the input invoices on which rebate is sought, has been made in RG-23A Part-II, it is conclusively proved that no Cenvat credit on the said invoices was availed by the Respondent. Therefore, in view of foregoing, it is submitted that the grounds adopted by the Department in the Revision Application are improper and the same is liable to be dismissed.

4. Several personal hearing opportunities were given to the Applicant-Department and the respondent viz. on 06.10.2022, 19.10.2022, 08.12.2022 and 22.12.2022. However, both of them did not attend on any date nor have they sent any written communication. Since sufficient opportunities have been given, the matter is therefore taken up for decision based on available records.

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

6. Government observes that the main issue involved in the instant Revision Application is whether rebate claim of duty paid on materials used in the manufacture of export goods can be rejected for non-submission of original copy of 'duplicate invoice' under which the material was received?

7.1 Government observes that the concerned Notification No. 41/2001-Central Excise (N.T.) dated 26.06.2001 issued under Rule 18 of the Central Excise Rules do not specify any mandatory condition of submission of duplicate invoice (in original) of material procurement. The relevant extract of said Notification is reproduced hereunder:

In exercise of the powers conferred by of rule 18 of the Central Excise (No.2) Rules, 2001, the Central Government hereby directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter: -

(1) .....

(2) .....

(3) Procurement of material. - The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise (No.2) Rules, 2001:

Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2001 under invoices issued by such dealers.

7.2 Government observes that in the instant case the respondent had procured the main raw material from its group company, M/s. Indo Rama Synthetics Limited, situated at the same address as that of the respondent, viz. A-31, MIDC Industrial Area, Butlibori, Nagpur. Thus, both the respondent and its supplier came under same Central Excise jurisdiction, viz. Range – Butibori, Division-II, Nagpur. In compliance with the specified procedure in the said Notification No. 41/2001-Central Excise (N.T.) dated 26.06.2001, the respondent had filed the rebate claim with the jurisdictional Central Excise Division. Thus, the rebate sanctioning authority had the entire wherewithal to verify the authenticity of the concerned input invoices, including from other suppliers, on which rebate had been claimed and also verification of cenvat records of material period to ensure no Cenvat credit had been availed on those invoices by the respondent.

7.3 Government observes that the presentment of the duplicate copy of Central Excise invoice is only a procedural requirement. Government observes that the Applicant-Department has not doubted the duty paid character of materials used in the export goods or has brought on record

any evidence to show availment of cenvat credit on the inputs used in the export goods by the respondent.

8. Government observes that in numerous court cases it has been held that "substantial benefit cannot be denied because of procedural lapses". The case laws relied upon by the Applicant-Department are not found applicable in the instant matter, for the reasons detailed hereunder:

- Hindustan Coca Cola Beverages Pvt. Ltd. - In this case, the invoice issued was subsequently cancelled and as the goods to be sent under it were not moved from the factory, a refund claim was filed for the duty paid. As the assessee failed to produce the original invoice which was cancelled by them, hence the ruling went against them. However, in the instant case corroboratory evidence available in form of records having description the goods which accompanied the impugned input invoices, can be utilized for verification.
- IOCL, Hari Chand Shri Gopal, B.P.L. Ltd. - The matter related to non-adherence of stipulated Conditions in Exemption Notifications, hence not applicable in the instant matter.

Thus, Government concludes that whereas stipulated 'Conditions' are to be mandatorily complied, to avail the benefit of a Notification, the laid down procedure is to facilitate in availing the benefit of the Notification and thus any lapse in following it is condonable, subject to satisfactory corroboratory evidence.

9. As regards the other contention of the Applicant-Department that the respondent had not produced the sanction given by the jurisdictional Central Excise authority for Input-Output ratio, Government observes that as per impugned Notification No. 41/2001-Central Excise (N.T.) dated 26.06.2001, the jurisdictional Central Excise authority has to *verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner*

of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods. Government observes that the respondent had been granted permission for manufacture and export of finished goods by the jurisdictional Assistant Commissioner as detailed by the Appellate authority at para 47 & 48 of the impugned OIA, reproduced hereunder:

> 47. *I also find from the records submitted that the appellant had filed declaration dated 10.08.2004 under Rule 18 of Central Excise Rules, 2002 in prescribed annexure and had requested to grant permission to export Polyester /cotton yarn under claim of rebate of excise duty paid on input i.e. polyester fiber. The Assistant Commissioner, Central Excise Division-II Nagpur had also granted permission for manufacture / processing and export of finished goods under Not. No. 40/2001-CE (NT) dated 26.06.2001 and 41/2001-CE(NT) dated 26.06.2001 subject to fulfillment of conditions and procedure as stipulated therein. This fact has been mentioned in the Department's show cause notice No. V (55) 18-536/2005/Reb/10145 Dtd.13.12.2005*
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> 48. *Therefore, I do not agree with the Lower authority's point regarding absence of Input-Output norms or absence of requisite permission from the Divisional Officer.*

10. In view of the findings recorded above, Government upholds the Order-in-Appeal No. NGP/EXCUS/000/APPL/183/17-18 dated 11.07.2017 passed by the Commissioner (Appeals), GST & CX, Nagpur and rejects the impugned Revision Application.

21/3/23

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 169 /2023-CX(WZ)/ASRA/Mumbai dated 21.03.23

To,
M/s. Spentex Textiles Limited,
A-31, MIDC Industrial Area.
Butibori, Nagpur – 441 122.

Copy to:

1. Commissioner of CGST & Central Excise,
   Nagpur-I Commissionerate,
   GST Bhavan, Civil Lines,
   Telengkhedi Road, Nagpur - 440 001.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Notice Board.