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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  
8<sup>th</sup> Floor, World Trade Centre, Cuff Parade,  
Mumbai- 400 005

F NO. 195/260/14-RA-CX/413

Date of Issue: 06.12.2017

ORDER NO. 17/2017/CX (WZ)/ASRA/MUMBAI DATED 06.12.2017  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER&EX-OFFICIO ADDITIONAL  
SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF  
THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Spentex Industries Limited, A-31, MMIDC, Butubori,  
Nagpur-441122  
Respondents : 01.The Commissioner of Central Excise (Appeals), Nagpur  
02.The Assistant Commissioner of Central Excise-Division-  
II, Nagpur.  
Subject : Revision Applications filed, by M/s Spentex Industries  
Limited, A-31, MMIDC, Butubori, Nagpur-441122 under  
35EE of the Central Excise Act, 1944 against the Order-in-  
Appeal No. NGP / EXCUS / 000 / APP / 057 / 13-14 dated  
29.04.2014 passed by the Commissioner of Central Excise  
(Appeals), Nagpur.

## : ORDER:

This Revision Application was filed by M/s Spentex Industries Limited, A-31, MMIDC, Butubori, Nagpur-441122 to against the Orders-in-Appeal No. NGP/EXCUS/000/APP/057/13-14 dated 29.04.2014 passed by the Commissioner (Appeals), Nagpur upholding the Order-in-Original no. 2410/2013/Ref/CEX/Dn-II dated 20.09.2013 passed by the Assistant Commissioner, C.EX. Division-II, Nagpur.

2. The brief facts of the case are that the applicant have filed rebate claims both for export stage & input stage rebate i.e. total 51 rebates claims and 18 rebates claim as per Rule 18 of Central Excise Rules, 2002. The above claims for Rebate of duty on exported goods were sanctioned by the Deputy Commissioner, Central Excise, Rebate, Raigad vide his Orders-in-Originals No. O-I-O No. 79/2005/Dn-II/REF to 129/2005/Dn-II/REF ( 51 rebate claims) dated. 01.04.2005 & O-I-O No. 304/2005/Dn-II/REB to 321/2005/Dn-II/REB (18 rebate claims) dated 01.04.2005 passed but input stage rebate totaling to Rs. 1,30,27,903/- ( Rs. One Crore, Thirty lakhs, Twenty Seven Thousand Nine Hundred Three only) were rejected.

3. Being aggrieved by the aforementioned Orders-in-Originals, the Applicant filed appeal before Commissioner (Appeals), Nagpur by claiming that as per Rule 18 of Central Excise Rules, 2002 they are eligible for rebate of duty paid on inputs used in the manufacture of export goods as well as in respect of duty paid by them on export of finished goods. The Commissioner (Appeals), Nagpur allowed the Applicant appeals vide Orders-in-Appeals Nos. SVS/182-232/NGP-II/2005 dated 18.07.2005 & Orders-in-Appeal No. SVS/236-253/NGP-II/2005 dated 19.07.2005 ie input stage rebate was also allowed.

4. Being aggrieved, the Department filed Revision applications No. 198/235-285/2005-RA and No. 198/287-304/2005-RA against the aforesaid Orders-in-Appeal of the Commissioner (Appeals) before the Joint

Secretary, Government of India, who allowed the Department's Revision Application vide Order No. 217-285/2006 dated 31.03.2006 with the observation that if any amount is contained in the rebate claim representing the amount claimed as CENVAT on packing materials, the amount after due calculation should be reduced from the rebate claim. On 26.06.2012 vide letter no. SIL/BTB/COMM/CEX/REB/2012-13 the applicant requested department to sanction the pending rebate claim on the basis of above order dated 31.03.2006 of Government.

5. A Show Cause Notice dt. 11.06.2013 was issued by the Department as to why impugned rebate claims may not be rejected. The said Show Cause Notice was adjudicated by the Assistant Commissioner, Division-II, Nagpur rejecting the impugned rebate claims vide Order-In-Original No. 2410/2013/Ref./C.Ex./Dn-II Dtd. 20.09.2013 to the extent of Rs. 1,30,27,903/- (Rs. One Crore, Thirty lakhs, Twenty Seven Thousand Nine Hundred Three only) on input stage duty paid.

6. Being aggrieved by the above impugned Order-in-Original dated 20.09.2013, the Applicant filed an appeal before Commissioner (Appeals) on 21.11.2013, The Commissioner (Appeals), Nagpur vide Order-in-Appeal No. NGP/EXCUS/ 000/ 057/13-14 Dtd. 29.04.2014 rejected the appeal on the ground that the res-judicata implicit here by the Judgement dated 3.05.2006 of the Bombay High Court.

7. Aggrieved with the above Order-in-Appeal dated 29.04.2014, an Appeal was filed by the Applicants before Hon'ble CESTAT on 25.07.2014. Simultaneously, they also filed a Revision Application before Hon'ble Joint Secretary, GOI on 25.07.2014.

8. The Hon'ble CESTAT dismissed the appeal as not maintainable. Thus, the present Revision Application No.195/260/14 pending before Joint Secretary, Government of India is taken up for decision.



9. A personal hearing before the Government was held on 16.10.2017 which was attended by the Shri B.B.Mohite, the Applicant's advocate and Shri D.B.Deodhar, Senior Manager (C) of the Applicant, who reiterated the submissions filed through their letter dated 16.10.17 and pleaded that Revision Application be allowed. None was present on behalf of department.

10. The Applicant's submission was mainly based on the issue that 'the Department apparently accepted the Orders-in-Revision Nos.217-285/2006 dated 31.03.2006 and did not proceed any further against the above said Orders-in-Revision of Government of India. These Orders-in-Revision upholding the grant of rebate in respect of the duty paid on final products exported as well as duty paid on the inputs used in the manufacture of the same exported goods were not challenged by Commissioner, Central Excise, Nagpur and had attained finality. They also relied upon Supreme Court's decision in their own case of M/s Spentex Industries Ltd. Vs. CCE, Nagpur and Others, 2015(324) ELT686 (SC) wherein it has been held that the rebate of duty paid on the inputs used in the export of manufactured goods and rebate of duty paid on the finished goods exported are admissible.

11. On examination of the relevant records relating to above mentioned Revision Application and submission made by the Applicant, Government notes that the main issue to be answered is, whether in this case, the manufacturer exporter is eligible only for rebate of duty in respect of inputs used in the manufacture of export goods or the rebate of duty paid on finished goods exported or is eligible for rebate of duty paid on both inputs stage as well as finished goods stage.

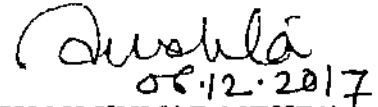
12. Government finds that issue involved was already been decided affirmative under earlier order No. 217-285/2006 dated 31.03.2006 issued by Joint Secretary, Government of India with some observation. The above order dated 31.03.2006 is still in force as no records are placed before Government which can show that against above order dated 31.03.2006 of

Government was challenged by the Department in the proper forum. Further, above issue is now well supported by above referred decision of the Supreme Court reported in 2015 (324) ELT 686 (SC) in the Applicant's own case but relating to other period.

13. Further, Government notes that, the above issue involved in the Revision Application is no more res-integra with the Order of Hon'ble Supreme Court of India dated 9.10.2015 as reported in 2015 (324) ELT 686 (SC) and discussed supra. Accordingly, the Government holds that the Applicant is eligible for rebate of duty in respect of central excise duty paid on inputs which were used in the manufacturing of exported goods, as well as for duty paid on the finished export goods.

14. The Government, therefore, sets aside the Order-in-Appeal no. NGP/EXCUS/000/057/13-14 dated 29.04.2014 and allows the instant Revision Application with consequential relief.

15. So ordered



(ASHOK KUMAR MEHTA)

Principal Commissioner (RA) & Ex-Officio  
Additional Secretary to Government of India  
Mumbai

ORDER No. 17/ 2017/CEX(WZ) /ASRA/ Mumbai DATED 6.12.2017

To,

M/s Spentex Industries Limited,  
A-31, MMIDC,  
Butubori, Nagpur-441122

Copy to;

1. The Principal Commissioner of GST & CX , Nagpur Commissionerate,  
Post box no. 81, Civil Lines, Telengkhedi Road, Nagpur-440001  
(Maharashtra)

2. The Commissioner (Appeals), Kendriya Utpad ShulkaBhavn, Civil Lines, Telengkhedi, Road, Nagpur-440 001
3. The Deputy / Assistant Commissioner, GST & CX, Nagpur Commissionerate
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.