

SPEED POST



F.No. 195/128-131/2018-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...25/8/21...

Order No. 206-209/2021-CX dated 24-8-2021 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. CHD-EXCUS-001-APP-498-501-17-18 dated 27.02.2018 passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicants : M/s Mahavir Spinning Mills-Textile Division, Baddi (HP).

Respondent : The Commissioner of CGST & Central Excise, Shimla.

ORDER

Four revision applications, bearing nos. 195/128-131/2018-R.A., all dated 30.05.2018, have been filed by M/s Mahavir Spinning Mills-Textile Division, Baddi, Distt. Solan, Himachal Pradesh, (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. CHD-EXCUS-001-APP-498-501-17-18 dated 27.02.2018 passed by the Commissioner (Appeals), CGST, Chandigarh whereby the Commissioner (Appeals) has allowed the appeals filed by the Respondent department against the Orders-in-Original passed by the Assistant Commissioner, Central Excise & Service Tax Division, Baddi.

2. The brief facts leading to the present proceedings are that the Applicants herein filed four rebate claims before the original authority in respect of Central Excise duty paid on the exported goods, under Rule 18 of the Central Excise Rules, 2002. The details of the rebate claims filed and disposed by the original authority are tabulated hereunder:

S. No.	Order-in-Original No. & Date	Amount Sanctioned in cash (Rs.)	Amount Sanctioned by way of credit in cenvat account (Rs.)	Total amount sanctioned (Rs.)
1	354/AC/R/BADDI/2016 dated 06.06.2016	1,97,572/-	5,911/-	2,03,483/-
2	431/AC/R/BADDI/2016 dated 01.07.2016	3,55,752/-	3,661/-	3,59,413/-
3	355/AC/R/BADDI/2016 dated 06.06.2016	3,95,761/-	9,911/-	4,05,672/-
4	3262/AC/R/BADDI/2016 dated 05.05.2016	54,323/-	75/-	54,398/-
5		TOTAL		10,22,966/-

The Respondent department challenged the Orders passed by the original authority before the Commissioner (Appeals) who, vide the impugned Order-in-Appeal, allowed the appeal holding that simultaneous availment of higher rate of drawback and rebate of Central Excise duty paid, under Rule 18, is not admissible.

3. The revision applications have been filed, mainly, on the ground that claiming higher rate of drawback does not bar them

from claiming rebate of duty paid on final exported product; that drawback is an export incentive which sets off the duty suffered at the input stage and it does not have any bearing on the final stage duty; that the Hon'ble Supreme Court in the case of Spentex Industries Ltd. vs. CCE {2015 (334) ELT 686 (SC)} has held that the rebate claims of duty paid on inputs and input services for manufacturing of exported product is also allowed along with rebate claim of duty paid on export of finished product; that the Commissioner (Appeals) has relied on the judgments of the Hon'ble High Court of Madras in the case of M/s Raghav Industries Ltd. vs. UOI {2016 (334) ELT 584 (Mad.)} & M/s Kadri Mills (CBE) Ltd. vs. UOI {2016 (334) ELT 642 (Mad.)}; which are not applicable in the facts of the case; and that therefore entire claim should be allowed in cash.

4. Personal hearing, in virtual mode, was held on 23.08.2021. Sh. Rupender Singh, Advocate appeared for the Applicants and reiterated the contents of the RAs. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is being taken up for final disposal based on records.

5.1 The Government has examined the matter. It is observed that the issue involve, in the instant RAs, is squarely covered by the judgment of Hon'ble High Court of Madras, in the case of M/s Raghav Industries {2016 (334) ELT 584 (Mad.)} wherein it has been held that:

"While sanctioning rebate, the export goods, being one and the same, the benefits availed by the applicant on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of the Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief

to the exporters by offsetting the duty paid. When the applicant had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit."

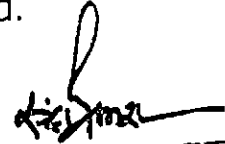
5.2 The judgment in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of M/s Kadri Mills (CBE) Ltd. (supra). Though it is stated by the Applicants that these judgments are not applicable in the facts of the present case, the Government finds that the ratio of these judgments of Hon'ble Madras High court is applicable on all fours in the present case.

6. The Applicants have relied on the Hon'ble Apex Court's decision in the case of M/s Spentex Industries Ltd. vs. CCE {2015 (324) ELT 686} in support of their case. It is observed that the judgment in Spentex Industries is an authority on the issue that the exporter is entitled to both the rebates under Rule 18 of Central Excise Rules, 2002 and not one kind of rebate only. The issue involved in the present case, on the other hand, is regarding admissibility of rebate under Rule 18 when higher rate of drawback has been availed in respect of the same final goods, under the Drawback Rules, which was not the issue before the Apex Court in Spentex Industries. Further, in the case of M/s Raghav Industries (supra), the Hon'ble Madras High Court has clearly distinguished the judgment of Apex Court in the case of Spentex Industries on the grounds that the case before the Hon'ble Supreme Court was regarding "benefits of rebate on the inputs on one hand as well as on the finished goods exported on the other hand" under Rule 18 ibid whereas in the case on hand, the benefit is claimed under two different statutes i.e. Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and the Central Excise Rules, 2002.

7. Even earlier, the Government, vide its order No. 1237/2011-CX dated 21.09.2011, in the case of Sabre International Limited vs. CCE,

Noida, reported as {2012 (280) ELT 575 (GOI)}, has held that allowing drawback on both Customs & Central Excise portion and rebate of duty on final product will amount to double benefit. The Government has also held the same view in several other cases, including in the Applicant's own case vide Order No. 18-27/2021-CX dated 08.02.2021.

8. In view of the above, the Government finds no infirmity in the impugned OIA. The revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s. Mahavir Spinning Mills-Textile Division,
(Unit of Vardhman Textiles Ltd.),
Sai Road, Baddi, Distt. Solan (H.P.) – 173 205.

G.O.I. Order No. 206-209 /21-CX dated 24-8-2021

Copy to: -

1. The Commissioner of CGST, Shimla, Ground & 1st Floor, Commercial Parking Complex, Chotta Shimla – 171 002.
2. The Commissioner (Appeals), CGST, C.R. Building, Plot No. 19-A, Sector – 17-C, Chandigarh – 160 017.
3. Sh. Rupender Singh, Advocate, (M/s BSM Legal, Advocates & Solicitors), Q-6, Hauz Khas Enclave, New Delhi – 110016.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. ✓ Spare Copy.

ATTESTED


24.08.2021
(लक्ष्मी राघवण)
(LAKSHMI RAGHAVAN)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi