

**SPEED POST**



F.No. 195/135-136/2018-R.A.  
195/137-138/2018-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... 25/08/21

Order No. 211-214/2021-CX dated 25/08/2021 of the Government of India, passed by **Sh. Sandeep Prakash**, Additional Secretary to the Government of India, under Section 35<sup>EE</sup> of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 94-95(CRM)CE/JDR/2017-18 & 96-97(CRM)CE/JDR/2017-18, both dated 22.02.2018, passed by the Commissioner (Appeals), CGST, Jodhpur.

Applicants : M/s Rajasthan Textile Mills, Kota.

Respondent : The Commissioner of CGST, Udaipur.

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## **ORDER**

Four revision applications, bearing nos. 195/135-136/2018-R.A. & 195/137-138/2018-R.A., all dated 05.06.2018, have been filed by M/s Rajasthan Textile Mills, Kota (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. 94-95(CRM)CE/JDR/2017-18 & 96-97(CRM)CE/JDR/2017-18, both dated 22.02.2018, passed by the Commissioner (Appeals), CGST, Jodhpur. The Commissioner (Appeals) has upheld the Orders-in-Original Nos. 115/R/2015 & 116/R/2015 both dated 24.04.2015 & 277/R/2015 & 278/R/2015 both dated 04.11.2015, passed by the Assistant Commissioner, Central Excise Division, Kota vide which the rebate claims of the Applicants herein were rejected.

2. Brief facts of the case are that the Applicants herein were registered with the Central Excise department and engaged in the manufacture of M.M. Yarn falling under Chapter 52 and 55 of the First Schedule of Central Excise Tariff Act, 1985. They filed claims for rebate of duty paid on exported goods, totally amounting to Rs. 83,71,455/-, under Rule 18 of the Central Excise Rules, 2002, which were rejected by the original authority on the ground that since the Applicants herein had claimed higher rate of drawback in respect of exported goods, the grant of drawback shall amount to double benefit. The Commissioner (Appeals) upheld the orders of the original authority and rejected the appeals filed by the Applicants herein.

3. The revision applications have been filed, mainly, on the ground that the Applicant is entitled to the rebate claims filed under Rule 18, as all conditions of grant of rebate have been fulfilled; that the findings of the lower authority that sanction of rebate under Rule 18, when drawback had already been claimed, would result in double benefit, is based on incorrect understanding of law; that in terms of Hon'ble Supreme Court's Order in *M/s Spentex Industries vs. CCE*

{2015 (324) ELT 686 (SC)}, the issue is no longer res-integra; that the Hon'ble Rajasthan High Court in the case of *Iscon Surgicals Ltd. vs. Union of India* {2016 (344) ELT 108 (Raj.)} has followed the principle laid down in *Spentex Industries* (supra) and decided an identical case in favour of the assessee; that denial of rebate claim in cash is unsustainable; and that even otherwise transitional provision under Section 142 (3) of the CGST Act, 2017 mandate refund in cash. The written synopsis dated 19.08.2021 alongwith compilation of case laws has also been filed by the Applicant.

4. Personal hearing in the matter was held, on 23.08.2021, in virtual mode. Ms. Sukriti Das, Advocate made the submissions on behalf of the Applicants. She reiterated the contents of the RAs and the synopsis filed on 23.08.2021. Ms. Das highlighted that the issue is covered by the judgment of the Hon'ble Rajasthan High Court in the case of *Iscon Surgicals Ltd. vs. UOI* {2016 (344) ELT 108 (Raj.)}. Being the judgment of the jurisdictional High Court, it was binding on the Commissioner (Appeals) to follow the same. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for final disposal based on records.

5.1 The Government has examined the matter. It is observed that the main issue involved, in the instant RAs, that survives for consideration i.e. simultaneous avilment of drawback and rebate in respect of the exported goods, 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:

"13. *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."*

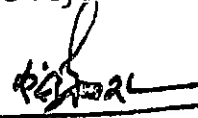
5.2 The judgment in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of M/s Kadri Mills (CBE) Ltd. (supra).

6. The Applicants have relied on the Hon'ble Rajasthan High Court's judgment in the case of M/s Iscon Surgicals Ltd. vs. UOI (supra) to support their case and have contended that being an order of the jurisdictional High Court, the Commissioner (Appeals) was bound to follow the same. Hon'ble Rajasthan High Court has decided this matter in the light of the Apex Court's decision in the case of M/s Spentex Industries Ltd. vs. CCE (supra). 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. In its brief order in the case of Iscon Surgicals (supra), the Hon'ble Rajasthan High Court has not indicated the reasons for following the case of Spentex Industries in respect of the issue in hand. On the other hand, 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. In this background, the reliance placed by the Commissioner (Appeals) on Raghav Industries cannot be faulted.

7. The Applicants have also pleaded that the original authority had allowed the amount paid as duty to be re-credited in the CENVAT account, and that this amount should be paid in cash in view of the provisions of Section 142 (3) of the CGST Act, 2017. The Government finds that the original authority has made such an order only in respect of rebate claims amounting to Rs. 88,477/- and Rs. 1,50,169/-, out of the total claims of Rs. 83,71,455/-. Further, the instant claims are for rebate under Rule 18 of the Central Excise Rules, 2002. 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, permitting such re-credit amounts to granting the rebate by way of re-credit while simultaneously also rejecting the very same claim. It is trite to say that what cannot be done directly can also not be done indirectly. As such, the Government finds that the present contention of the Applicants also does not merit consideration.

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



(Sandeep Prakash)

Additional Secretary to the Government of India


M/s. Rajasthan Textile Mills,  
(Unit of Sutej Industries Ltd.),  
Pachpahar Road, Bhawani Mandi,  
Distt. Jhalawar-326 502 (Rajasthan).

G.O.I. Order No. 211-214 /21-CX dated 25/8/2021

Copy to: -

1. The Commissioner of CGST, Udaipur, 142-B, Sector-11, Hiran Magri, Udaipur – 313 002 (Rajasthan).
2. The Commissioner (Appeals), CGST, Jodhpur, G-105, New Jodhpur Industrial Area, Jodhpur – 342 003.
3. Ms. Sukriti Das, Advocate, M/s. Lakshmikumaran & Sridharan Attorney No. 5, Link Road, Jangpura Extension, New Delhi – 110 014.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED



आशीष तिवारी / ASHISH TIWARI  
सहायक आयुक्त / Assistant Commissioner  
केन्द्रीय वस्तु एवं सेवा कर, केन्द्रीय उत्पाद एवं सीमा शुल्क  
CGST, Central Excise & Customs  
राजस्व विभाग / Department of Revenue  
वित्त मंत्रालय / Ministry of Finance  
भारत सरकार / Government of India  
नई दिल्ली / New Delhi