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SPEED POST

**F.NO.195/744/13-RA**
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE
NEW DELHI-110 066

Date of Issue: 30/7/15

**ORDER NO. 22/2015-CX DATED 27.07.2015** OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT 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.33/2013-(SLM)CEX dated 26.04.13 and passed by the Commissioner of Central Excise (Appeal), Salem. |
| APPLICANT | : | M/s Kadri Mills (Cbe) Ltd., Erode. |
| RESPONDENT | : | Commissioner of Cental Excise, Salem. |

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## ORDER

This revision application is filed by M/s Kadri Mills (Cbe) Ltd., Erode (hereinafter referred to as applicant) against the Order-in-Appeal No.33/2013-(SLM)CEX dated 26.04.2013, passed by the Commissioner of Central Excise (Appeals), Salem with respect to Order-in-Original No.65/2012(R)AC/Erode-I dated 18.12.2012 passed by the Assistant Commissioner of Central Excise, Erode-I Division, Tamil Nadu.

2. Brief facts of the case are that the applicants were registered as 100% EOU and they have opted out of 100% EOU scheme w.e.f. 09.12.2011 and functioning as domestic tariff area manufacturing unit. At the time of de-bonding, they paid duty on inputs, work in progress, finished goods, consumables and capital goods and availed cenvat credit on the duty paid on the said goods during November 2011 as detailed below:

| Description | Cenvat | E:Cess | SHE Cess |
|---|---|---|---|
| Inputs | 8793701 | 218169 | 109084 |
| Capital Goods | 10396260 | 32049 | 16036 |
| Input Service | 13657 | 273 | 137 |

The applicant reversed the credit availed on inputs Rs.8793701/-+ Rs.218169 + Rs.109084/- during December, 2011. The applicant exported the goods under ARE1 No. 53/11-12 to 57/2011-12 on payment of duty during the month of December, 2011 from their Cenvat Credit account and claimed the rebate. On verification, it was noticed by the Range Officer that the applicant had availed the benefit of drawback at the port of export, comprising of the Customs Duty, Central Excise Duty and Service Tax Duty.

| ARE 1 No. & Date | Invoice No. & Date | Shipping Bill No. & Date | Central Excise Duty paid Rs. | Drawback availed Rs. | Rate of Drawback availed at the port of Export | Portion of Drawback availed |
|---|---|---|---|---|---|---|
| 53/11-12 19.12.11 | 146/11-12 19.12.11 | 6774173 21.12.11 | 110384 | 30201 | Rs.25 per kg | Customs + Excise+ Service Tax |
| 54/11-12 20.12.11 | KW 147/11-12 19.12.11 | 6780331 22.12.11 | 221648 | 71957 | Rs.54 per kg | Customs + Excise+ Service Tax |
| 55/11-12 21.12.11 | KW 133/11-12 18.11.12 | 6782661 22.12.11 | 81315 | 0 | 0 | Not availed the Drawback |

| | | | | | | |
|---|---|---|---|---|---|---|
| 57/11-12 29.12.11 | KW 148-11-12 to KW 150-11-12 all dated 23.12.11 | 6903012 30.12.11 | 1748092 | 59108 | Rs.25 per kg | Customs + Excise+ Service Tax |
| | | 6903028 30.12.11 | | 449233 | Rs.25 per kg | Customs + Excise+ Service Tax |
| | | 6912350 30.12.11 | | 101277 | Rs.54 per kg | Customs + Excise+ Service Tax |

As the applicant availed double benefit except in the ARE 1 No.55/11-12 dated 21.12.2011, the lower authority, in the impugned order denied to sanction the rebate in cash and he ordered for re-credit in their Cenvat Credit account in respect of remaining ARE-1.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeal), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 During the period of availing higher drawback, applicants were having accumulated credit in their capital goods credit account and also in their input services credit account. Input services credit was earned during the non-drawback EOU period, which they are eligible for refund under Rule 5 of the Cenvat Credit Rules, 2004 otherwise, it can be used for payment of duty on exports.

4.2 The applicants had exported their goods under ARE-1 53/19.12.2011, 54/20.12.2011, 55/21.12.2011 and 57/29.12.2011 by paying duty through the cenvat credit. They also availed higher drawback for which no cenvat inputs and input services were utilized. The applicants filed the rebate claim under Rule 18 of Central Excise Rules, 2002 for refund of duty paid on the exported goods.

4.3 The adjudicating authority had sanctioned the rebate of Rs.81,315/- in cash pertaining to ARE-I No.55/21.12.2011 and for the remaining amount of Rs.20,80,124/- as re-credit. The reason adduced by the respondent is that the

applicants had availed the benefit of duty drawback consisting of customs duty, excise duty and service tax, obtained full benefit in respect of other ARE-1s. The authority had held that the applicant's activity of encashing CENVAT credit lying as balance in their Cenvat account due to de-bonding of capital goods is not correct in law as two benefits cannot be allowed for the same goods. The Commissioner (Appeals) had also followed the order of the adjudicating authority.

4.4 The findings of the Department are not sustainable. Condition 15 of Notification No. 68/2011-CUS (NT) dated 22.9.2011 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 is that no cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product. The applicants had fulfilled this condition since they have availed only the capital goods credit and input services credit earned during the EOU period and which are related to non-drawback exports. Rs.20,80,124/ - was given as re-credit instead of cash. This is not correct because as per Board's Circular 687/3/2003-CX dated 03.01.2003 rebate should be given in cash.

5. Personal hearing was scheduled in this case on 30.03.2015 and 16.04.2015. Hearing held on 16.04.2015 was attended by Shri S. Durairaj, Advocate on behalf of applicant who reiterated the grounds of Revision Application. Besides, the applicant also submitted written reply wherein, they mainly reiterated Board's Circular No.687/3/2013-Cx dated 03.01.2003 and Government of India Order in case of Premonit International EXIMP 1996(86)ELT 152(GOI) and that they have paid duty from their CENVAT account on credit accumulated from capital goods and input services. The respondent Department vide written submission dated 20.03.2015 mainly reiterated contents of impugned Orders. None attended personal hearing on behalf of respondent department.

6. 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.

7. On perusal of records, Government observes that the applicant was registered as 100% EOU and started operating as a domestic tariff area manufacturer w.e.f. 09.12.2011. While de-bonding, they discharged their duty liability on inputs, work in progress, finished goods, consumables and capital goods and availed cenvat credit on the duty paid on the said goods during November 2011. The applicant then reversed the cenvat credit availed on inputs, during December 2011. The applicant then exported the goods on payment of duty during month of December 2011 from their cenvat credit account. Subsequently, they filed rebate claims. The original authority held that as the applicant availed higher rate of drawback comprising Customs, Central Excise and Service tax portion, the benefit of rebate cannot be held admissible as it will amount to double benefit. Accordingly, the original authority denied to sanction the rebate in cash (barring in one case where no drawback availed) and in such cases instead allowed re-credit in applicant's cenvat account. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. Government observes that the applicant, has claimed that as they are left with only cenvat credit availed on capital goods and input services there is no bar on availing drawback and rebate simultaneously and rebate be sanctioned to them in cash. On the other hand, the departmental authorities have held that as the applicant have availed higher rate of drawback comprising Customs, Central Excise and Service Tax, allowing rebate would amount to double benefit. In view of rival contentions, Government proceeds to examine the case keeping in mind the various provisions of law relating to drawback as well as rebate of duty on export goods.

9. Government first proceeds to decide the issue of admissibility of rebate claims taking into account the harmonious and combined reading of statutory provision relating to rebate as well as duty drawback scheme. Government notes that the term Drawback has been defined in Rule 2(a) of Customs, Central Excise Duties and Service Tax Drawback Rules 1995 (as amended) as under:-

"(a) "drawback" in relation to any goods manufactured in India, and exported, means the rebate of duty chargeable on any imported materials or excisable materials used in the manufacture of such products".

The said definition makes it clear that drawback is rebate of duty chargeable on materials used in the manufacture of exported goods. Rule 18 of Central Excise Rules, 2002 stipulates that where any goods are exported, Central Government may by Notification grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods. The provisions of Rule 18 of Central Excise Rules 2002 are interpreted by Hon'ble High Court of Bombay at Nagpur bench, in the case of CCE Nagpur Vs. Indorama Textiles Ltd. 2006(200) ELT 3(Bom) wherein it was held that rebate provided in Rule 18 of Central Excise Rule 2002 is only on duty paid on one of the stages i.e. either on excisable goods or on materials used in manufacture or processing of such goods. Hence, assessee is not entitled to claim rebate of duty paid at both stages simultaneously i.e. duty paid at input stage as well as finished goods stage. The principles laid down in said judgement are to be followed while considering rebate claim under Rule 18 of Central Excise Rules, 2002. Applicant is now claiming rebate of duty paid on exported goods while he has already availed benefit of higher rate of duty drawback comprising of Custom, Central Excise and Service Tax in respect of said exported goods. The drawback is nothing but rebate of duty chargeable on materials used in manufacturing of exported goods and therefore allowing rebate of duty paid on exported goods will amount to allowing both types of rebates of duty at inputs stage as well as finished goods stage which will be contrary to the above said judgment of Hon'ble Bombay High Court and provisions of rule 18 of Central Excise Rules, 2002. In this case, the applicant has paid duty from cenvat credit availed on capital goods and on services received. There is no bar on availing rebate of duty on goods exported, if the duty is paid through cenvat credit available on capital goods and services, provided double benefit in form of higher rate of duty drawback and rebate has not been availed. In this case, the applicant has admittedly availed higher rate of drawback. Under such

circumstances, allowing rebate would amount to double benefit, which cannot be held admissible.

10. Government also notes that it is an undisputed fact that the applicant had paid duty on export goods from cenvat credit account. Therefore, it cannot be claimed that cenvat facility has not been availed for goods under export and as such condition No. 12(ii) of Notification No.68/2007-Cus (NT) dated 16.07.2007 has been violated. Since the applicant has already availed said duty drawback in violation of said condition 12(ii), allowing rebate of duty on exported goods will definitely amount to double benefit, which is not permissible either under scheme of Drawback or Rebate of duty. CBEC has also clarified in its Circular No. 83/2000-Cus dated 16.10.2000 (F.No. 609/116/2000-DBK) that there is no double benefit available to manufacturer when only Customs portion of All Industry Rate of Drawback is claimed. The harmonious and combined reading of statutory provisions of Drawback and rebate scheme reveal that double benefit is not permissible as a general rule. However, in this case, the applicant has availed input stage rebate of duty in the form of higher duty drawback comprising of Customs, Central Excise and Service Tax portion, another benefit of rebate of duty paid on exported goods will definitely amount to double benefit.

11. As regards citing of individual interpretations/applicability of above mentioned Notifications/Case Laws, Government observes that Hon'ble Supreme Court in the case of Amit Paper Vs. Commissioner of Central Excise Ludhiana reported in 2006 (200) ELT 365 (SC) has held that primacy to a Notification cannot be given over Rules as such interpretation will render statutory provisions in Rules nugatory and in the case of Commissioner of Trade Tax UP Vs. Kajaria Ceramics Ltd. reported in 2005 (191) ELT 20 (SC) it was held on the issue of interpretation of statutes that context and parameters of statutory provisions under which a Notification is issued, are to be read in toto and when a Notification is issued under one statutory provision for same purpose as a chain of progress without overlapping, the ambiguity of contents of such Notification can be resolved by referring not only to statutory provisions but also to previous and subsequent Notification. Further, Government, going by the

observations of Hon'ble Supreme Court in Case (i) ITC Ltd. Vs. CCE [2004 (171) ELT -433(SC)] and (ii) Paper Products Ltd. Vs. C.C. [1999(112) ELT -765(SC)] that the plain and simple wordings of the (clarified/stipulated) statute are to be strictly adhered to, is of the considered opinion that the claimed rebate of duty paid on exported goods is not admissible in these cases. Further, the case laws relied upon by the applicant are not applicable to the present cases as the facts involved are different.

12. In view of above circumstances, Government holds that the instant rebate claims of duty paid on exported goods are not admissible under Rule 18 of Central Excise Rule 2002 read Notification No. 19/2004-CE(NT) dated 06.09.2004 when exporter has availed higher rate of duty drawback of Customs, Central Excise and Service Tax in respect of exported goods. As such, Government finds no legal infirmity in the impugned Order-in-Appeal and hence, upholds the same.

13. The Revision Application is thus rejected being devoid of merit.

14. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Kadri Mills (Cbe) Ltd.
Unit of Kadri Woven's SIPCOT Industrial Growth Centre
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Tamil Nadu-638052.

Attested

(Bhagwat Sharma)
Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

**GOI ORDER NO. 22 /2015-Cx DATED 27 .07.2015**

Copy to:

1. Commissioner of Central Excise, No. 1 Foulkes Compound, Anaimedu Road, Salem-636 001.
2. Commissioner of Central Excise (Appeals), No. 1 Foulkes Compound, Anaimedu Road, Salem – 636 001.
3. Assistant Commissioner, Central Excise, Erode-I Division, Tamil Nadu.
4. PA to JS(RA)
5. Guard File.
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ATTESTED

(B.P.SHARMA)
OSD (RA)