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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.NO.195/592/12-RA

(19)

Date of Issue: 03/08/2018

ORDER NO. 229 /2018-CX (WZ)/ASRA/MUMBAI DATED 06.07.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR METHA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE ACT,1944.

- Applicant : M/s Ambika Cotton Mills Ltd. Coimbatore.
- Respondent : The Assistant Commissioner of Central Excise, & Dindigul I Division, Dindigul.
- Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against Order-in-Appeal No. 18/MAD/2012 dated 24.02.2012 passed by the Commissioner of Central Excise(Appeals), Madurai.



ORDER

This Revision Application is filed by M/s Ambika Cotton Mills Ltd. Coimbatore (hereinafter referred to as "the applicant") against the Order in Appeal No. 18/MAD/2012 dated 24.02.2012 passed by the Commissioner of Central Excise(Appeals), Madurai.

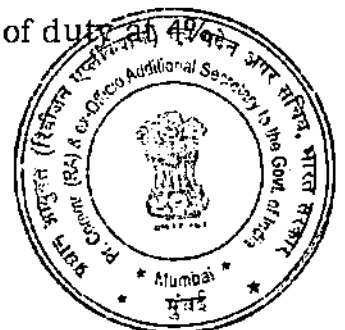
2. The brief facts of the case are that the applicant is engaged in the manufacture and export of 100% cotton yarn and availed cenvat credit of duty paid on Capital Goods. The applicant filed the 3 rebate claims for Rs.9,00,771/- (Rupees Nine Lakh Seven Hundred Seventy One only) paid on 100% cotton yarn manufactured and exported by them under claim of rebate. It was ascertained that the aforesaid cotton yarn was cleared on payment of duty from the factory of the applicant for export during the period from 7.12.2008 to 6.7.2009. The above cotton yarn was exempted fully and absolutely under Notification No.29/2004-CE dated 9.7.2004 as amended by Notification No.58/2008-CE dated 7.12.2008. The above notification was further amended by Notification No.11/2009 dated 7.7.2009 which prescribed an effective rate of 4% Adv on the 100% cotton yarn. It therefore, followed that the said cotton yarn was fully exempted during the period from 7.12.2008 to 6.7.2009. As per section 5A(1A) of Central Excise Act, 1944, when any excisable goods are absolutely exempted, the manufacturers of such excisable goods shall not pay duty thereon. Since it appeared in this case that the duty paid by the applicant on the clearances of 100% cotton yarn was not duty of excise in terms of the aforesaid provision, the show cause notices were issued to the applicant proposing rejection of the impugned rebate claims. After due process of law, the lower authority passed the aforesaid order rejecting the impugned rebate claims on the ground that the duty paid by the applicant on the exempted cotton yarn cleared during the period from 7.12.2008 to 6.7.2009 is not duty of excise and hence not eligible for rebate under Rule 18 of Central Excise Rules, 2002.



3. Aggrieved by the above order, the applicant filed appeal before Commissioner (Appeals), Madurai who vide impugned Order in Appeal No.18/MAD/2012 dated 24.02.2012 upheld the Order in Original No.109/2011-Rebate dated 25.04.2011 and rejected the appeal filed by the applicant.

4. Being aggrieved with the impugned Order-in-Appeal, the applicant filed present Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the various grounds as enumerated in their application. Main grounds of appeal are as follows :

- 4.1 The confirmation of the order of the lower authority dated 25.4.2011 is , contrary to law and the facts of the case. The said order is liable to be reversed in toto.
- 4.2 Cotton yarn never remained as an exempted product in view of different set off Notifications. in fact, Notification No.58 of 2008 dated 7.12.2008, on the basis of which the impugned order had been passed, only applies to domestic clearances and has been erroneously applied in the instant case.
- 4.3 While Notification. 58/2008 dt.07.12.2008 reduced rate of duty to Nil by amending Notification No. 29/2004 dt.09.07.2004, Notification No. 59/2008 dt.07.12.2008 prescribed a rate of duty at 4% in respect of 100% cotton yarn and hence cotton yarn is not an exempted product during the period from 07.12.2008 to 06.07.2009 as contested by the department.
- 4.4 Notification No. 59/2008 dt.07.12.2008 is not considered by Learned Commissioner of Central Excise, (Appeals), (CCE(A)) in his order and thus his order is vitiated. There is no grant of exemption from the whole of the duty in respect of 100% cotton yarn so as to attract Section 5A (1A) of Central Excise Act, 1944 as always cotton yarn attracted concessional rate of duty. This fact is ignored by CCE(A) in his order.



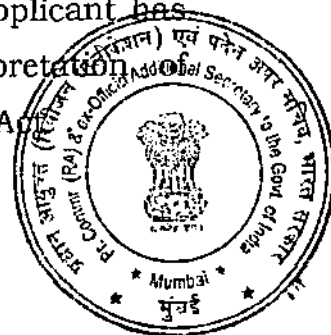
- 4.5 Moreover Section 5A is applicable only in respect of domestic clearance and not in respect of exports, in respect of which rebate is claimed.
- 4.6 It is wrong to contend that the budget 2009-10 rate of duty has been restored from Nil to 4% in terms of Notification No. 11/2009 dt.07.07.2009, in factual the rate of been shifted from Notification No.59/2008 dt.07.12.2008 to Notification No. 29/2004 dt.09.07.2004 vide Notifications No.20/2009 dt.07.07.2009 and 11/2009 dt.07.07.2009. The existence of Notification No.20/2009 dt.07.07.2009 was not brought on record and it is a material omission.
- 4.7 Even though there is no specific provision as in the case of refund of inputs by virtue of Rule 5 of Cenvat Credit Rules, 2004. The rebate of duty is granted in respect of capital goods. The exported products are not exempted products and when there is a specific notification providing for a rate of duty it cannot be called as an exempted product and under such circumstances the claim of rebate in respect of exports cannot be construed as refund of duty paid on capital goods used for manufacturer of exempted goods. In any event, the appellant is entitled to rebate under Rule 18 of the Central Excise Rules, 2001 and the same cannot be denied.
- 4.8 The rational of the judgments of the Supreme Court and various High Courts supports the stand taken by the appellant in this regard.
5. The respondent department vide its reply dated 14.02.2014 to Revision Application filed by the applicant, submitted its parawise comments as under:

- 5.1 The 100% cotton yarn was fully and absolutely exempted during material period under Notification No.29/2004 dated 09.07.2004 as amended by notification No.58/5008 dated 07.12.2008 and therefore vide Order-in-Appeal the Commissioner (Appeal), Madurai has correctly rejected the



rebate claim of the duty paid without authority of law on exempted cotton yarn.

- 5.2 Before 7.12.2008 cotton yarn was subjected to duty as per Notification No 29/2004(with 4% rate of duty with cenvat credit) and 30/2004 with Nil rate of duty without cenvat credit availment). Issue of notification No. 58/2008 dated 07.12.2008 amended the Notification no 29/2004 and consequent to this amendment, rate of duty was reduced to NIL and cotton yarn thus became fully and absolutely exempted product during the period from 7.12.2008 and 7.7.2009 i.e. upto date of issue of Notification no.11/2009 dt 7.7.2009.
- 5.3 The Notification 58/2008 dated 07.12.2008 was issued to reduce the rate of duty by 4% on inter-alia the impugned 100% cotton yarn i.e NIL rate under section 5A(1A) of central Excise Act, 1944. The cotton yarn hitherto under 4% rate of duty thus attracted NIL rate of duty w.e.f 07.12.2008. Further, the matter was also examined by Board on representation from the trade. As a substantial question of law was involved, the matter was referred by Board to the Law Ministry for its opinion. Ministry of Law has opined that the language used in said section 5A(1A) is unambiguous and principles of harmonious construction cannot be applied in the instant case in view of specific provision under sub-section (1A) of section 5A of the Central Excise Act. The Law Ministry has accordingly concluded that in view of the specific bar provided under sub-section (1A) of section 5A of the Central Excise Act, the manufacturer cannot opt to pay the duty under Notification No.59/2008-CE dated 07.12.2008 and he cannot avail the Cenvat credit of the duty paid on inputs".
- 5.4 The exemption vide Notification No.58/08-CE dated 7.12.2008 issued under Section 5(A) was absolute and the applicant has no option to pay duty on the correct interpretation of explanation 1(A) to Section 5A of the Central Excise Act.



- 5.5 What is stated by them is not correct in law. The Notifications Nos. 29/2004-CE dated 09.07.2004, 58/2004-CE dated 07.12.2008 and 59/2008-CE dated 07.12.2008 have been issued by the Central Government by virtue of power vested under Section 5A of the Central Excise Act, 1944. In case of any anomaly difference in interpretation of the Notification etc. the Section 5A of Central Excise Act, 1944 will prevail. The Explanation (1A) of Section 5A prohibits payment of duty in case of absolutely exempted goods and the applicant can hardly pay duty under any notification.
- 5.6 As the basic notification No. 29/2004 dated 9.7.2004 (4% duty with cenvat credit) was amended by the Notification no 58/2009- and was once again restored by the Notification no.11/2009 dated 7.7.2009, it deals with nil to 4%(cotton yarn). In this case the notification no.20/2009 dated 7.7.2009 is not related because it deals with 4% to 8%(polyester yarn).
- 5.7 What is stated by the applicant is absolutely wrong. Cotton yarn remained exempted product during the period from 7.12.2008 to 7.7.2009 i.e. upto date of issue of Notification no.11/2009 dt 7.7.2009 as clearly explained above.
- 5.8 **As per RULE 18 of the central Excise Act, 1944. Rebate of duty.** Where any goods are exported, the 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 and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the Notification. Hence duty paid by the claimant during the aforesaid exempted period will not be considered as duty paid and hence the same is not eligible for rebate under rule 18 ibid as clearly explained hereinabove.



The Commissioner (Appeals) has correctly rejected the applicant's appeal on the basis of the amending notification No.58/2008 dated 07.12.2008.

6. A personal hearing was held in this case on 27.11.2017. However, None from the applicant's side appeared for the hearing. Shri V. Muthukumar, IRS, Assistant Commissioner, Tuticorin Division appeared for the personal hearing on behalf of the respondent department and reiterated the submissions filed through their letter dated 14.02.2014. A final hearing in the matter was held on 01.02.2018 which was attended by Shri K.N. Ravichandran, Chartered Accountant on behalf of the applicant. The office of the Revisionary Authority, New Delhi vide letter dated 21.01.2013 communicated the deficiencies appearing in the Revision Application filed by the them and accordingly, the applicant filed Petition for condonation of delay for delay of 10 days in filing the present Revision Application vide its Petition dated 22.02.2013. The applicant pleaded in their petition that :

- The order of the CCE (Appeals) Madurai was received on 16.03.2012 and an appeal in respect of the same is to be filed within 3 months from the date of communication of the order and in this case it falls on or before 15.06.2012.
- The petitioner's factory is situated at Dindigul, 160 Kms away from Coimbatore wherein the Registered office of the company is situated. It is the practice of the Managing Director to frequently visit factory and on such visit would stay at the factory premises for weeks' time together and return to Registered office. Such work requirements had also resulted in inadvertent delay.
- The petitioner Company is a listed entity and in terms of listing agreement entered in to with the Stock Exchanges the audited results have to be published within 31.05.2012 and in the case of the Petitioner it has been complied with on 29.05.2012. The preparation of accounts and getting the same audited involves lot of voluminous work. As soon as the same was over, the revision petition was prepared and filed.



- The appeal was duly dispatched on 12.06.2012 under Speed post Receipt No. ET6130952551N (certified copy enclosed) and well within the time provided for the appeal so as to ensure prompt delivery and in view of this under the bonafide impression that the same would have been delivered within the time limit of 15.06.2012. Further, the Appeal involved a substantial question of law and conflict views and took considerable time in preparing and filing the revision petition.

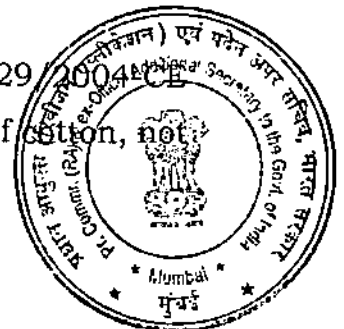
While hearing the Condonation of delay petition the applicant a view of the aforesaid reasons pleaded to condone the delay of 10 days in the filing of the revision application.

Since, the applicant filed this revision application in 10 days after initial 90 days period, which falls within condonable limit of 90 days. Hence, Government in the interest of justice condones the said delay and proceeds to examine the case on merits.

Shri K.N. Ravichandran, Chartered Accountant, duly authorized by the applicant reiterated the submission filed in Revision Application and two decisions which squarely covered their case. It was pleaded that Revision Application be allowed and the Order-in-Appeal be set aside.

7. 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. On perusal of records, Government observes that the issue in this case is whether rebate claims filed by the applicant for duty paid by them on the 100% Cotton Yarn exported by them during the period from 07.12.2008 to 06.07.2009, were admissible to them, when the said goods were unconditionally exempt from whole of Central Excise Duty under Notification No. 58/2008-CE dated 07.12.2008 until amended Notification No. 11/2009-CE dated 07.07.2009 brought the effective rate of duty on the said goods from NIL to 4% adv.

8. Government observes that the exemption Notification No.29/2004-CE dated 09.07.2004 which granted partial exemption to all goods of cotton, not



containing any other textile materials, falling Chapter Heading 5205 and charged to duty @ 4% adv. was amended vide Exemption Notification No.58/2008- CE dated 07.12.2008 whereby the said goods were fully exempted by way of prescribing Nil Rate of duty. The said Notification 29/2004-CE was further amended vide Notification No. 11/2009-CE dated 07.07.2009 whereby the rate of duty on the said goods was again changed from NIL to 4% adv. Thus during the period 07.12.2008 to 06.07.2009, the said cotton goods were chargeable to Nil Rate of duty without any condition. In view of Section 5A (1) of Central Excise Act, 1944, the said goods were unconditionally exempt from whole of central Excise duty. Commissioner (Appeals) in his impugned order observed that ,

"Therefore, the manufacturers of cotton yarn not containing any other textile materials can hardly pay duty thereon during the said period of full and absolute exemption either by virtue of any other notification prescribing any effective rate or in the absence of such a notification, on the correct interpretation of the aforesaid section. As a consequence, the appellants' claim that the impugned goods i.e. cotton yarn not containing any other textile materials were dutiable under notification No.59/2008 dated 07.07.2008 and hence not exempted during the disputed period from 07.12.2008 to 06.07.2009 is not legally tenable. Under the circumstances, it is categorically held on the basis of specific prohibition on payment of duty on fully and absolutely exempted goods under Section 5A(IA) of Central Excise Act, 1944 that the impugned duty paid by the appellants on the 100% cotton yarn fully and absolutely exempted under the said notification No.29/2004 dated 09.07.2004 as amended by the notification No.58/2008 dated 7.12.2008 during the period from 7.12.2008 to 6.7.2009 at the time of export does not qualify for grant of rebate under Rule 18 of Central Excise Rules, 2002.

9. Government also observes that Commissioner (Appeals) in his impugned Order also observed that

"in relation to the earlier 7 similar rebate claims sanctioned to the appellants by the department, appeal filed by the department against



the Order In original sanctioning the rebate was allowed by Commissioner (Appeals) vide Order in Appeal Nos. 347-398/2009 dated 29.10.2009 directing the appellants to repay, by cash, the rebate sanctioned earlier. The revision application filed by the appellants against the above Order-in- Appeal was also rejected by Government of India vide Order dated 14.02.2011. Meanwhile the appellants in response to notice issued by the department paid back the rebate sanctioned to them with reference to the said 7 rebate claims. After having repaid the rebate amounts sanctioned to them in relation to the said 7 earlier similar claims by accepting the departmental stand on the subject matter, the appellants can seldom take the diametrically contrary view in this appeal relating to subsequent similar rebate claims".

10. Government also observes that in the applicant filed additional grounds on the date of the personal hearing contending that

- *The CESTAT, Principal Bench in the case of Winsome Yarns Ltd Vs CCE & ST , Chandigarh- II (2015 -TIOL -233 - CESTAT- DEL) held that " When two exemption Notifications are available to an assessee , he can always opt for the one which is most beneficial for him and in this regard the Department can not force the assessee to avail a particular exemption Notification .*
- *The Hon'ble Gujarat High Court in its decision in Arvind Limited Vs union of India (2014 (300) ELT 481 (GUJ) in para 9 of its Judgement has observed as under "*

Thus when the petitioner is not liable to pay duty in the light of absolute exemption granted under Notification No.29/2004 as amended by Notification No. 59-2008-CE read with the provision of Section 5 A (1A) of the Act and when it has not got any other benefit in this case , other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he is entitled to without having made such payment of duty) we are of the firm opinion that all the authorities have committed serious



denying the rebate claims filed by the petitioner under section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue , according to us , is more technical rather than in substance and that too is based on no rationale at all."

- *The Hon'ble High Court allowed ordered for grating of rebate with Interest. The issue involved in the present RA is identical and both the decisions are in favour of your appellant.*

In view of the above , the RA be allowed , setting aside the order of CCE (A) Madurai.

11. Government has gone through both the case laws mentioned in para supra and is of a considered opinion that the facts of M/s Arvind Limited Vs Union of India [(2014 (300) ELT 481 (GUJ)] are akin to the present case in hand in as much as in that case also the rebate claims were rejected on ground that payment of duty was at the will of the assessee and export rebate impermissible when assessee was exempt from payment of whole duty as Final products manufactured by petitioner exempted from payment of duty by Notification No. 29/2004-C.E. as amended by Notification No. 58/2008-C.E.

12. While allowing the Special Civil Application filed by the applicant M/s Arvind Ltd. and allowing the export rebate claims holding that when the petitioner was given exemption from payment of whole of the duty, and if it paid duty at the time of exporting the goods, there was no reason why it should be denied the rebate claimed which the petitioner was otherwise entitled to, hence Export rebate claim allowed, the Hon'ble Gujrat High Court observed as under :-

9. On, thus, having heard both the sides and on examination of the material on record, the question that involves in these petitions is the wrong availment of the benefit of concessional rate of duty vide Notification No. 59/2008, dated December 7, 2008. Admittedly, the final products were exempted from payment of duty by original Notification No. 29/2004-C.E., dated July 9, 2004 as further amended vide Notification No. 59/2008-C.E., dated December 7, 2008. The fact is not being disputed by the respondents that the petitioner availed



Notification No. 59/2008 for clearance made to export and thereafter filed various rebate claims. It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notification No. 59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No. 29/2004 as amended by Notification No. 59/2008-C.E. read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.

10. We also cannot be oblivious of the fact that in various other cases, the other assesseees have been given refund/rebate of the duty paid on inputs used in exported goods. The stand of the Revenue is also not sustainable that the payment of duty on final products exported at the will of the assessee cannot be compared with other type of cases of refund /rebate of duty. Admittedly, when the petitioner was given exemption from payment of whole of the duty and the petitioner if had paid duty at the time of exporting the goods, there is no reason why it should be denied the rebate claimed which otherwise the petitioner is found entitled to. We are not going into the larger issues initially argued before us as subsequently the Revenue has substantially admitted the claim of rebate of excise duty and has not resisted in substance such claim of rebate.

11. Resultantly, both the petitions are allowed quashing and setting aside the orders impugned in both the petitions by further directing the respondents to grant the petitioner of Special Civil Application No. 10887 of 2012 rebate of Rs. 3,15,63,741/- (Rupees Three Crore Fifteen Lac Sixty Three Thousand Seven Hundred Forty One only) and Rs. 39,59,750/- (Rupees Thirty Nine Lac Fifty Nine Thousand Seven Hundred Fifty only) to the petitioner of Special Civil Application No. 10891 of 2012, by calculating interest thereon under Section 14B of the Central Excise Act, 1944, within a period of eight weeks from the date of receipt of a copy of this judgment.



receipt of this order for verification. A reasonable opportunity of hearing will be afforded to the applicant.

17. In view of above discussion, Government sets aside impugned order in appeal.

18. Revision application thus succeeds in above terms.

19. So ordered.

Ashok Kumar Mehta
06.07.18

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 229 /2018-CX (WZ) /ASRA/Mumbai DATED 06.07.2018.

To,

M/s. Ambika Cotton Mills Ltd.,
9A, Vallur Street, Sivanadha Colony,
Coimbatore- 641 012.,

1. The Commissioner of CGST Madurai, Central Revenue Buildings, B.B. Kulam, Madurai 625 002
2. The Commissioner of CGST (Appeals-I), Central Revenue Building, B.B. Kulam, Madurai -625002
3. The Deputy / Assistant Commissioner of CGST, Dindigul - I Division No.68, Nehruji Nagar, R.M. Colony, Dindigul - 624 001
4. Sr. P.S. to AS (RA), Mumbai.
- ✓ 5. Guard file
6. Spare copy

ATTESTED

S.R. Hirulkar
3/7/18

S.R. HIRULKAR
Assistant Commissioner (R.A.)

