SPEED POST

F.No. 195/204/2018-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..18/11/21...

Order No. 250/2021-CX dated 18-11-2021 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. 769(CRM)CE/JDR/2018 dated 16.07.2018 passed by the Commissioner (Appeals), CE & CGST, Jodhpur.

Applicants : M/s Shree Rajasthan Syntex Ltd., Dungarpur, Rajasthan.

Respondent : Commissioner of CGST, Udaipur.

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ORDER

A revision application no. 195/204/2018-RA dated 12.10.2018 has been filed by M/s Shree Rajasthan Syntex Ltd., Dungarpur, Rajasthan. (hereinafter referred to as the Applicants) against Order-in-Appeal no. 769(CRM)CE/JDR/2018 dated 16.07.2018 passed by the Commissioner (Appeals), CE & CGST, Jodhpur wherein the appeal filed by the Applicants against Order-in-Original Nos. 199-203/2016/R-CE(Ref) dated 04.04.2016 passed by the Assistant Commissioner, Udaipur, has been rejected.

2. Brief facts of the case are that the Applicants are engaged in the manufacture of Yarn under Chapter 55 of the Central Excise Tariff Act, 1985. The Applicants took the CENVAT credit of the excise duty paid on capital goods and utilized the same for payment of excise duty on clearance of yarn exported under claim of rebate of final stage duty paid under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. Subsequently, five rebate claims, for Rs. 12,30,585/-, were filed by the Applicants which were rejected by the original authority on the grounds that as the Applicants were operating under Notification No. 30/2004-CE dated 09.07.2004, they were neither required to pay duty nor they could pay duty on the goods manufactured and cleared by them as they were not availing credit on inputs. Further, since higher rate of drawback had been claimed by the Applicants, grant of rebate of excise duty would amount to double benefit. Commissioner (Appeals), vide the impugned Order-in-Appeal, has, while accepting the contention of Applicants herein that they could operate simultaneously under notification no. 29/2004-CE and notification no. 30/2004-CE, upheld the Orders-in-Original on the grounds of availment of higher rate of drawback.

3. Being aggrieved, the Applicants have filed this revision application on the ground that claiming higher rate of drawback does

not bar them from claiming rebate of duty paid on final products that were exported. They had not availed any CENVAT credit on inputs and input services used for manufacturing the final products but had paid duty from CENVAT credit account of capital goods. A written submission dated 16.11.2021 has also been filed wherein it is submitted that if the rebate of duty cannot be granted in cash, the equivalent amount may be allowed to be re-credited in the CENVAT account.

4. Personal hearing was held on 17.11.2021, in virtual mode. Sh. Anil Rathi, CA and Sh. Anubhav Ladia, Director, appeared for the Applicants and reiterated the contents of the revision application. Sh. Faisal Khan, AC, appeared for the Respondent department and supported the order of the Commissioner (Appeals).

5.1 The Government has examined the matter. The issue involved in the present case is whether the rebate of Central Excise duty paid in respect of exported goods would be admissible when the Applicant exporter had already availed composite (or higher) rate of drawback in respect of the same goods.

5.2 It is observed that the issue involved is squarely covered by the judgment of Hon'ble Madras High Court, in the case of M/s Raghav Industries [2016 (334) E.L.T. 584 (Mad.)], wherein it has been held:

"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 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."

5.3 The judgement in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of M/s Kadri Mills (CBE) Ltd. [2016(334) ELT 642 (Mad.)].

5.4 The Applicants have relied on the Hon'ble Rajasthan High Court's judgment in the case of M/s Iscon Surgicals Ltd. Vs UOI [2016(334) ELT 108 (Raj.)] to support their case. Hon'ble High Court has decided this matter in the light of the Hon'ble Supreme Court's decision in the case of M/s Spentax Industries Ltd. Vs. CCE [2015(324) ELT 686]. It is observed that the judgment in Spentax 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 i.e., the exporter is entitled to claim rebate of duty paid on the excisable goods as well as the rebate of duty paid on materials used in manufacture or processing of such excisable goods. On the other hand, the issue involved in the present case, 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 Spentax Industries. In its brief order in the case of Iscon Surgicals (supra), the Hon'ble Rajasthan High Court has not indicated the reason for following the ratio of Spentax 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 Spentax Industries (supra) 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 benefits claimed by the exporters are covered under two different statutes, one under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise Rules, 2002".*

6. It has been prayed that the rebate amount be allowed to be recredited in the CENVAT account of the Applicants if not paid in cash. The Government observes that there is no provision in Rule 18 ibid to recredit the duty paid in the CENVAT account in case the claim is rejected. In fact, permitting such recredit would amount to granting the rebate by way of recredit while simultaneously also rejecting the very same claim. It is trite that what cannot be done directly can also not be done indirectly. Hence, this contention of the Applicants cannot, also, be accepted.

7. Accordingly, the revision application is rejected.

(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Shree Rajasthan Syntex Ltd.,
"SRSL House", NH 8, Pulla Bhuwana Road,
Udaipur-313 004 (Rajasthan).

G.O.I. Order No. 250/21-CX dated 18-11-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Udaipur.
2. Commissioner (Appeals), Jodhpur.
3. Sh. Anil Prahalad Rathi & Co., 1-C-4, Vyas Colony, Bhilwara-311 001 (Rajasthan)
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy

ATTESTED

(Ashish Tiwari)
ASSISTANT COMMISSIONER (R.A.)