

SPEED POST



F.No. 195/04-09/2020-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 22/11/21

Order No. 251-256 /2021-CX dated 22-11-2021 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 Applications filed under section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal Nos. 306-311(CRM)/CE/JPR/2019 dated 25.11.2019 passed by the Commissioner (Appeals), CE & CGST, Jaipur.

Applicants : M/s Ginni International, Neemrana, Rajasthan.

Respondent : Commissioner of CGST, Alwar.

ORDER

Six revision applications, bearing nos. 195/04-09/2020-RA all dated 23.01.2020, have been filed by M/s Ginni International, Neemrana, Rajasthan (hereinafter referred to as the Applicants) against Orders-in-Appeal nos. 306-311(CRM)/CE/JPR/2019 dated 25.11.2019 passed by the Commissioner (Appeals), CE & CGST, Jaipur wherein the appeals filed by the Applicants against Orders-in-Original Nos. 114-119/2018-19 dated 25.02.2019 passed by the Assistant Commissioner, Behror, have been rejected.

2. Brief facts of the case are that the Applicants are engaged in the manufacture of 100% Cotton Woven Grey Fabrics and blended woven fabrics and availing exemption on the blended woven fabrics segment under Notn. No. 30/2004-CE dated 09.07.2004, without availing CENVAT credit on inputs being used in their manufacture. They filed six rebate claims, totally amounting to Rs. 20,89,512/-, for the duty paid on inputs used in the manufacture of blended woven fabric which was exported. The rebate claims were sanctioned by the jurisdictional excise authorities, vide six separate Orders-in-Original dated 22.11.2006, 31.10.2006, 31.10.2006, 30.06.2006, 30.06.2006 and 22.11.2006. These Orders-in-Original sanctioning rebate claims were, however, reviewed by the department and appeals were filed by the Respondent department before the Commissioner (Appeals). Six separate demand notices, all dated 19.04.2007, were also issued to the Applicants herein for recovery of erroneously granted rebate (refund) amounts. Appeals of the revenue were allowed by the Commissioner (Appeals), vide Order-in-Appeal No. 332(RKS)CE/JPR-I/2007 dated 14.11.2007. Aggrieved, the Applicants preferred revision application before the Government which was rejected vide Order No. 636/2018-CX dated 05.12.2018. Protective demands dated 19.04.2007 were confirmed vide the above said Orders-in-Original dated 25.02.2019. The Applicants filed appeals before the Commissioner (Appeals), which have been rejected, vide impugned Orders-in-Appeal.

3. The instant revision applications have been filed, mainly, on the grounds that appeals filed by the department against the Orders sanctioning rebate were infructuous and the issue of show cause notice was the correct course of action. Hence, the filing of appeals before the Commissioner (Appeals) and their subsequent rejection by the Government of India was infructuous. Several averments have been made on the merits of the issues involved as well.

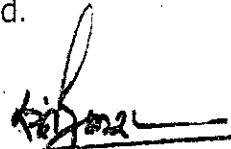
4. Personal hearing was held on 17.11.2021, in virtual mode. Sh. Rajat Dosi, Advocate, appeared for the Applicants and reiterated the contents of the revision applications. He also drew attention to the compilation filed by email on 16.11.2021. None appeared for the Respondent department and no request for adjournment has also been received. Hence, the matter is taken up for decision on the basis of records available.

5.1 The Government has carefully examined the matter. It is observed that the orders sanctioning rebate have been set aside by the Commissioner (Appeals) and the matter has attained finality with the rejection of revision application by the Government, vide aforesaid Order dated 05.12.2018. Thus, it stands settled that the rebate claims were sanctioned erroneously. Consequent recovery of such erroneously sanctioned rebate amounts cannot, therefore, be faulted.

5.2 The Applicants have, however, challenged this obvious position by terming the proceedings concluded vide Government's Order dated 05.12.2018 as infructuous. Hon'ble Supreme Court's judgment in the case of *Grasim Industries Ltd. {2011 (271) ELT 164 (SC)}* has been relied upon in support of this contention. The Government observes that the Applicants willingly participated in the earlier proceedings, which they are now terming as infructuous. In fact, having lost the appeal before Commissioner (Appeals), they first took the matter to CESTAT, which rejected the same as non-maintainable. The Applicants thereafter preferred revision application before the Government, which was also rejected in 2018. It is only after the proceedings spread over 11 years resulted in adverse orders that the Applicants have taken this plea of those very

proceedings being infructuous wherein they had all through willingly participated and two of which were actually initiated by them, i.e., the appeal before CESTAT and the revision application before the Government. Further, a three judge bench of Hon'ble Supreme Court has, in the case of *ITC Ltd. vs. Commissioner of Central Excise, Kolkata-IV {2019 (368) ELT 216 (SC)}*, held that unless an order of assessment is challenged and modified in accordance with law, the refund claim cannot be entertained since it is not open to the refund sanctioning authority to make fresh assessment on merits. Applying the ratio of the *ITC Ltd. (supra)* to the present case, it was not open to the original authority which itself had sanctioned the rebate claims, to make a fresh examination of the same rebate claims in a proceeding under Section 11A of the Central Excise Act and hold them as erroneously sanctioned. It is only when the orders sanctioning the rebate were set aside in accordance with law that the demand for amount so sanctioned erroneously could be legally enforced, which has been done in the present case. The ratio of *Grasim Industries Ltd. (supra)* is not applicable in the facts of this case and in view of the discussions above.

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



(Sandeep Prakash)

Additional Secretary to the Government of India

M/s Ginni International (Weaving Division),
RIICO Industrial area, Neemrana, Distt. Alwar,
Rajasthan-301 705.

G.O.I. Order No. 251-256/21-CX dated 22-11-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Alwar, "A" Block, Surya Nagar, Alwar – 301 001.
2. The Commissioner (Appeals), Central Excise & CGST, Jaipur, New Central Revenue Building, Statue Circle, Jaipur – 302 005.
3. M/s RSA Legal Solutions, 937 A, JMD Megapolis, Sohna Road, Sector 48, Gurgaon-122 001.

4. P.S. to A.S. (Revision Application).
5. Guard File.
6. ✓ Spare Copy.

ATTESTED



(लक्ष्मी राघवन)
(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