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DEPARTMENT OF REVENUE

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Mumbai- 400 005

F.No.195/691/2013-RA /1361 Date of Issue: 04.08.2021

ORDER NO. 252/2021-CX (WZ)/ASRA/MUMBAI DATED 26.07.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No 62/2013 (Ahd-II)CE/AK/Commr(A)/Ahd dated 12.03.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad

Applicant : M/s Ahinsa Spinners

Respondent : Commissioner of Central Excise, Ahmedabad

ORDER

This Revision Application is filed by M/s Ahinsa Spinners, Survey No. 36 to 58 (Palki), Village: Vasna Iyava, Sadand Viramgam Highway, Sanand, Ahmedabad – 382110 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No 62/2013 (Ahd-II)CE/AK/Commr(A)/Ahd dated 12.03.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

2. Briefly the Applicant, manufacturer is having Central Excise Registration No. AABCS9949LXM003 for manufacturing of excisable goods viz Polyester Yarn, Polyester Viscose Yarn, etc. falling under Chapter Heading 55 of the Central Excise Tariff Act, 1985.

(i) The Applicant had filed two rebate claims of Rs. 3,07,021/- and Rs. 3,08,189/- under Rule 18 of the Central Excise Rules, 2002 on their goods exported vide ARE-1 Nos. 10 and 11 both dated 24.12.2011 respectively.

(ii) It was noticed that the Applicant vide their letter dated 25.04.2006 had intimated about their intention to opt for full exemption from payment of Central Excise duty under Notifications No. 30/2004-CE both dated 09.07.2004.

(iii) Consequently, the Applicant reversed the Cenvat credit of Rs. 11,20,159/-contained in the raw material/work-in-progress/finished goods available with them as on 30.04.2006 in terms of the provisions of Rules 11(3) of the Cenvat Credit Rules 2004.

(iv) However, even after reversal of the Cenvat credit, the Applicant was found to have carried forward the Cenvat credit balance of Rs. 24,04,772/- and had shown the same as opening balance in the month of June 2006 in the Cenvat Credit Account.

(v) Further, the Applicant carried forward the said balance of Cenvat credit and during the period December 2006 to April 2007 also availed Cenvat credit of Rs. 15,98,586/- and debited an equal

amount in their Cenvat Credit Account. The said credit was wrongly taken by them towards the duty paid on the inputs used by them in the goods cleared by them during the period. However, realizing their mistake, the Applicant subsequently filed a refund claim of the duty paid on the inputs used in the exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 as amended and therefore debited equal amount of Cenvat credit wrongly taken as above.

(vi) Since January 2009 till December 2011, a balance of Rs. 26.60,958/- had been carried forward. In December 2011, the Applicant took Cenvat credit of Rs. 4,84,740/- and an amount of Rs. 6,17,003/- was debited towards payment of duty for the goods exported by them under ARE-1 Nos. 10 and 11 both dated 24.12.2011, for which they had filed two claims of rebate.

(vii) All through May 2006, since the Applicant opted for absolute exemption from payment of duty under Notification No. 30/2004-CE till December 2011, they had cleared their goods above two consignments for exports under ARE-1s on payment of duty, they opted for full exemption from payment of duty under Notification No. 30/2004-CE and clearing their goods either in the domestic market or for exports, without payment of duty. It is also observed that the Applicant continued to avail the benefit of exemption of full duty under Notification No. 30/2004-CE of their clearances in the domestic market.

(viii) Therefore, the abrupt action of the Applicant of availing Cenvat credit of Rs. 4,84,740/- in December 2011 and debiting an amount of Rs. 6,17,003/- from their Cenvat Credit Account towards payment of duty on the goods exported under the two ARE-1s is a clear indication of their fraudulent design to encash the balance of Cenvat credit wrongly carried forward in their account right from May 2006, as the balance of credit had already lapsed on 30.04.2006 when they had opted to avail exemption under

Notification No. 30/2004-CE in terms of Provisions of Rule 11(3) of the Cenvat Credit Rules, 2004 and was not available to them in any case.

(ix) Therefore, the Applicant was issued a Show Cause Notice dated 18.06.2012. The Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II vide Order-in-Original No. 3073 & 3074/Rebate/12 dated 30.07.2012 rejected the two rebate claims amount to Rs. 3,07,021/- and Rs. 3,08,189/- under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 in respect of ARE-1 Nos. 10 and 11 both dated 24.12.2011.

(x) Aggrieved the Applicant filed appeal with the Commissioner (Appeals-I), Central Excise, Ahmedabad. The Commissioner (Appeals), vide Order-in-Appeal No 62/2013 (Ahd-II)CE/AK/Commr(A)/Ahd dated 12.03.2013 rejected their appeal.

3. Aggrieved, the Applicant filed the Revision Application on the following grounds:

(i) The impugned Order-in-Appeal is arbitrary, erroneous, misconceived and without considering the submission made by the Applicant, hence untenable and deserved to be set aside.

(ii) Rebate admissible to the Applicant on merit as duty payment made from balance of Cenvat credit not lapsed:

(a) The whole Show Cause Notice/Order-in-Original/Order-in-Appeal was based on the grounds that any balance lying in the Cenvat Credit Account had lapsed on dated 30.04.2006 (when the assessee opted to avail exemption under Notification No 30/2004) in terms of provisions of Rule 11(3) of the Cenvat Credit Rules, 2004, so the Applicant cannot utilize the said amount of Cenvat credit for the payment of duty on the exported goods.

(b) In the Notification No. 30/2004 issued under Section 5A of the Act, *absolutely exemption* means the whole of duty is *exempted without any condition.*

(c) In terms of the provisions of Rule 11(3)(ii) of the Cenvat Credit Rules, 2004, if the exemption granted *absolutely* i.e. without any condition under Section 5A of the Act *from whole of duty only* than the Applicant has to reverse the Cenvat credit to the extent of pertains to input lying in the stock and if any balance is still lying after reversal than the same shall be *lapse.*

(d) In terms of the provisions of Rule 11(3)(i) of the Cenvat Credit Rules, 2004, if the exemption granted *with any condition (i.e. not absolutely exempted)* under Section 5A of the Act *from whole of duty only* than if any balance is still lying after reversal of Cenvat credit on the stock than the same shall not be lapse.

(e) In terms of provisions of Notification No. 30/2004 –

- The Exemption Notification issued under Section 5A of the Act.
- The said Notification exempt the whole of the duty leviable on the specified product.
- The said Notification is a conditional notification. The proviso of the said notification specified a condition that the provisions of the said notification shall not be applicable if the person availed the Cenvat credit on the input used in the specified product

Therefore, the said notification does not exempt the absolutely from whole of duty.

(iii) In terms of provisions of the Rule 11(3) of the Cenvat Credit Rules, 2004 and Notification No. 30/2004, the provisions of Rule 11(3)(ii) pertains to lapse of balance Cenvat credit would not be applicable on the Applicant as the credit will lapse only in a situation where the exemption is granted absolutely from the whole of duty. However, in the instant case the Notification No. 30/2004 is a conditional notification and it does not exempt the whole of duty absolutely as

there is a pre-condition in the said notification that the person will not avail the Cenvat credit on the input used in the specified goods. However the Commissioner(Appeals) did not given any perspective comments even any comments on this ground/ submission, its means that he is accepting the said ground/ submission, but do not wish to appreciate the ground/ submission. Therefore, the allegation that the balance duty will be lapse after clearance of goods or availing of exemption benefit under Notification No. 30/2004 is not sustainable and on this ground the Order-in-Original may be set aside.

(iv) The case of Applicant falls under the provisions of Rule 11(3)(i) and in compliance of the same, they had reversed the Cenvat credit pertaining to input used in the stock or in process or contained in the final product at the time of clearances of goods by availment of Notification No. 30/2004. The provisions of Rule 11(3)(i) does not specify about lapse of credit after opting of benefit of a notification which only exempt the whole of duty. Therefore, the allegation that the balance duty will be lapse after clearance of goods or availing of exemption benefit under Notification No. 30/2004 is not sustainable and on this ground the Order-in-Original/ Order-in-Appeal may be set aside.

(v) In the Show Cause Notice/Order-in-Original/Order-in-Appeal, it is also assumed that the provisions of lapse of credit is applicable on the both the Sub-rules i.e. Rules 11(3)(i) & 11(3)(ii). In this reference, the Applicant submitted that the said contention of the department is erroneous or misconceived as the condition of the lapse of credit is adjoined/ attached with the Rule 11(3)(ii) only and there is no relevance of the said condition with the Rule 11(3)(i). Further if the said condition is to be applicable on both the sub- rules, than in such situation the said condition is to be mentioned separately from the Sub-rule 11(3)(ii) and which should has to be part of Rule 11(3). And if the said condition is applicable to the Rule 11(3)(i) also than in such situation there is no requirement to insert the provisions of Rule

11(3)(ii) separately, the same may be mentioned with the Rule 11(3)(i) by the legislature. Therefore, it is clear that the lapse of Cenvat credit provisions would be applicable only in a situation where the exemption granted absolutely from the whole of duty i.e. provisions pertains to Rule 11(3)(ii).

(vi) Since in the instant case, the Applicant was availing a conditional notification benefit, therefore, lapse of credit provisions would not be applicable on them. The finding of the Hon'ble Commissioner is not correct, where the legislature is very much clear in a plain reading about wording/meaning / interpretation of a given Rule. There is no other meaning/interpretation may be arrived by interpret the said rule in another way. Further, the case laws refer by the Deputy Commissioner / Commissioner(Appeals) pertains to interpretation of Rule is misleading the case and the same is not be applicable/required in the instant case as the wording/ meaning of Rule is very much clear as stated above. It is well established principle that if the intention of the legislature is clear and unambiguous, then it is not open to add / substitute words in any rule, act, legislature. In the instant case, the intention of the legislature is very much clear that the Cenvat credit would not be lapse in case the goods cleared under a conditional notification in terms of provisions of Rule 11(3)(i) & (ii) of the Cenvat Rules, 2004.

(vi) The Applicant was regularly filing the monthly ER-1 Return since 2005-06 and showing the balance of Cenvat credit in their ER-1 Return and Cenvat Credit Account. They did not hide anything from the department, therefore, principally the department is also accepting this fact since 2005-06 that the provisions of Cenvat Credit Rules, 2004 does not lapse the Cenvat Credit if the Applicant avail the benefit of Notification No. 30/2004. However, after passing of more than 6 years, the department object that the Cenvat Credit has lapsed is absolutely misconceived/erroneous and just for denied of rebate of claim.

(vii) It is further submit that the act of the Applicant is not fraudulent as they had not hidden anything from the Department. When the provisions of Central Excise / Cenvat Rule 11(3)(i) does not restrict to carried forward of the balances of the Cenvat Credit and later on their utilization on the payment of any duty of excise in terms of provisions of Rule 3(4) of Cenvat Credit Rules, 2004, then the contention/allegation of the Department that the act of the Applicant is fraudulent design to encash the balance of Cenvat Credit is absolutely erroneous.

(viii) The Applicant had exported the goods under claim of rebate under Rule 18 of Central Excise Rules, 2002 and they had fulfilled all the conditions prescribed in the Rule 18 and Notification No 19/2004 CE (NT) dt 06.09.2004 issued under the said Rule. Further there is no dispute in the Show Cause Notice/Order-in-Original/Order-in-Appeal about exported of goods, therefore the whole of duty is to be granted to the Applicant on this alone.

(ix) The Deputy Commissioner also taken another ground (i.e non submission of documents on which Cenvat Credit availed) for rejection of rebate claim which were not mentioned /part in the Show Cause Notice and the same cannot be part for the rejection of claim at this stage. Further, there is no requirement to submit the Cenvat Credit documents for claiming the rebate claim under Rule 18 of Central Excise Rules, 2002. Therefore, the said ground is baseless and the Order-in-Original deserve to be set aside.

(x) In any case refund of Rs. 4,84,740/- is to be admissible as the Applicant had taken the fresh Cenvat credit of Rs. 4,84,740/- in December 2011 on the input used in the exported goods and made the payment of duty from the said credit on the exported goods Rs.6,17,003/- in December 2011. So to the extent of Rs.4,84,740/-, payment of duty on exported goods made from the fresh Cenvat credit instead of the balance of Cenvat credit carried forward from 30.04.2006. The payment of duty from the carried forwarded balance

is to the extent of only Rs. 1,32,263/-(Rs. 6,17,003/- minus 4,84,740/-)

(xi) Submissions on the Commissioner(Appeals) Observation:

(a) At Para 6 of the Order-in-Appeal, the Commissioner (Appeals) observed that *"the moot point is to examined by me in light of Notification No. 30/2004CE(NT) dated 09.07.2004 and Rule 11(3) of the CENVAT Credit Rules, 2004"*. The Applicant submitted that the Commissioner (Appeals) observe the moot point that whether the Notification No. 30/2004 is absolute exemption notification and applicability of Rule 11(3) for lapse of CENVAT Credit.

(b) At Para 7.6 to 8.2 of the Order-in-Appeal, the Commissioner (Appeals) created a charge on the Applicant that they cannot pay the duty in terms of provisions of Section 5A(1A) of the Central Excise Act, 1944. The Applicant submitted that Notification No. 30/2004 CE is not a absolutely exemption notification, it is a conditional notification so Section 5A(1A) will not be applicable in the instant case. Further, the said fact has also been accepted by the Commissioner (Appeals) at Para 8.7 of the Order-in-Appeal itself

> *"8.7 As per Central board of Excise and Custom Circular No. 845 dt. 01.02.2007 The manufacturer or producer of the textile products can avail both the Notification No 29/2004-CE dated 9.7.2004 and 30/2004-CE dated 9.7.2004 simultaneously subject to maintenance of separate inventories for use of cenvatable or non-cenvatable inputs used in manufacture of final products.."*

When the Commissioner (Appeals) accepted that the Applicant can clear the goods simultaneously with payment of duty and without payment of duty than in such situation the Commissioner (Appeals)'s finding is contradictory itself.

(c) Other Para 8.8 to 10.5 is created by the Commissioner (Appeals) is out of the ground of the Show Cause Notice and totally

misleading to the case and there is no relevance on the case of merit as the issue is to be decided only —

- whether the Notification No 30/2004 is a absolutely exemption notification
- whether the provisions of Rule 11(3)(ii) pertains to lapse of Cenvat credit will be applicable in the instant case.

However, the Commissioner (Appeals) totally gave irrelevant observation without considering the submission made by the Applicant in their appeal, so the Order-in-Appeal may be set aside.

(xi) The Applicant prayed that Order-in-Appeal and Order-in-Original be set aside and allow the rebate claim amount of Rs.6,15,390/- along with interest thereon.

4. Personal hearing in the case was fixed for 25.04.2018, 09.10.2019, 05.11.2019 no one appeared for the hearing. In view of a change in the Revisionary Authority, hearing was granted on 11.01.2021, 18.01.2021, 25.01.2021 and 18.03.2021 however none appeared for the hearing. Hence the case is decided on merits.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal.

6.1 On perusal of the records Government observes that Applicant, manufacturer of excisable goods viz Polyester Yarn, Polyester Viscose Yarn, etc. falling under Chapter Heading 55 of the Central Excise Tariff Act, 1985 had vide their letter dated 25.04.2006 intimated the Assistant Commissioner, Central Excise, Division-IV, Ahmedabad-II that about their intention to opt for full exemption from payment of Central Excise duty under Notifications No. 30/2004-CE dated 09.07.2004 w.e.f. 01.05.2006.

"SUB: Intimation regarding availment of the Notifications No. 30/2004-CE both Dt. 09.07.2004.

Dear Sir,

We are manufacturers of P.V. Yarn & Polyster Yarn falling under Chapter Heading 5509. At present we are availing the benefit of credit of duty paid on raw material under Cenvat scheme and pay duty at the appropriate rate on the finished goods manufactured out of the raw material.

From 01.05.2006 we are intent to avail zero duty scheme available under notification No. 30/2004-CE Dt. 09.07.2004. Accordingly, we shall not take credit of duty under Cenvat scheme as well as we shall not pay duty on our finished products.

We also assure that we shall reverse / pay the Cenvat excise duty on the input/finished goods lying in stock on Dt. 30.04.2006, as shall as we will also pay the duty on the Raw material in process."

Consequently, the Applicant reversed the Cenvat credit of Rs. 11,20,159/- contained in the raw material/work-in-progress/finished goods available with them as on 30.04.2006 in terms of the provisions of Rules 11(3) of the Cenvat Credit Rules 2004. However, even after reversal of the Cenvat credit, the Applicant was found to have carried forward the Cenvat credit balance of Rs. 24,04,772/- and had shown the same as opening balance in the month of June 2006 in the Cenvat Credit Account. Further, during the period December 2006 to April 2007, the Applicant also availed Cenvat credit of Rs. 15,98,586/- and debited an equal amount in their Cenvat Credit Account. The said credit was wrongly taken by them towards the duty paid on the inputs used by them in the goods cleared by them during the period. However, realizing their mistake, the Applicant subsequently filed a refund claim of the duty paid on the inputs used in the exported goods under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004 as amended and therefore debited equal amount of Cenvat credit wrongly taken as above. A balance of Rs. 26,60,958/- had been carried forward since January 2009 till December 2011. In December 2011, the Applicant took Cenvat credit of Rs. 4,84,740/- and an amount of Rs. 6,17,003/- was debited towards payment of duty for

the goods exported by them under ARE-1 Nos. 10 and 11 both dated 24.12.2011, for which they filed two claims of rebate of Rs. 3,07,021/- and Rs. 3,08,189/- under Rule 18 of the Central Excise Rules, 2002.

6.2 Government observes that from May 2006, the Applicant opted for absolute exemption from payment of duty under Notification No. 30/2004-CE till December 2011 and clearing their goods either in the domestic market or for exports, without payment of duty. The abrupt action of the Applicant of availing Cenvat credit of Rs. 4,84,740/- in December 2011 and debiting an amount of Rs. 6,17,003/- from their Cenvat Credit Account towards payment of duty on the goods exported under the two ARE-1s was a clear indication of their design to encash the balance of Cenvat credit wrongly carried forward in their account right from May 2006, as the balance of credit had already lapsed on 30.04.2006 when they had opted to avail exemption under Notification No. 30/2004-CE in terms of Provisions of Rule 11(3) of the Cenvat Credit Rules, 2004 and was not available to them in any case. Therefore, the Applicant was issued a Show Cause Notice dated 18.06.2012. The Deputy Commissioner, Central Excise, Division-IV, Ahmedabad-II vide Order-in-Original No. 3073 & 3074/Rebate/12 dated 30.07.2012 rejected the two rebate claims amount to Rs. 3,07,021/- and Rs. 3,08,189/- under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 in respect of ARE-1 Nos. 10 and 11 both dated 24.12.2011.

7. Government observes that the Applicant has submitted that

> *"3. That in terms of provisions of the Rule 11(3) of the CENVAT Credit Rules, 2004 and Notification No. 30/2004, the provisions of Rule 11(3)(ii) pertains to lapse of balance CENVAT credit would not be applicable on the APPELLANT as the credit will lapse only in a situation where the exemption is granted absolutely from the whole of duty.*
> *However, in the instant case the Notification No. 30/2004 is a* ***conditional notification*** *and it does not exempt the whole of duty* ***absolutely*** *as there is a pre condition in the said notification that the*

person will not avail the CENVAT credit on the input used in the specified goods............"

4. That the case of appellant falls under the provisions of Rule 11(3)(i) and in compliance of the same the appellant has reversed the CENVAT Credit pertaining to input used in the stock or in process or contained in the final product at the time of clearances of goods by availment of Notification No. 30/2004. The provisions of Rule 11(3)(i) does not specify about lapse of credit after opting of benefit of a notification which only exempt the whole of duty.

....

Therefore, the allegation that the balance duty will lapse after clearance of goods or availing of exemption benefit under Notification No. 30/2004 is not sustainable.."

Government finds that w.e.f 01.05.2006, the Applicant was availing Notification No. 30/2004-CE Dt. 09.07.2004 and had carried forward the accumulated Cenvat credit balance of Rs. 24,04,772/- and had shown the same as opening balance in the month of June 2006 in the Cenvat Credit Account Register and a accumulated balance of Rs. 26,60,958/- had been carried forward since January 2009 till December 2011.

8. Sub-rule (3) to Rule 11 of Cenvat Credit Rules, 2004 was inserted vide Notification No. 10/2007-C.E. (N.T.), dated 1-3-2007 which reads as follows –

"A manufacturer or producer of a final product shall be required to pay an amount equivalent to the Cenvat credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product lying in stock, if

(i) he opts for exemption from whole of duty of excise leviable on the said final product manufactured or produced by him under a notification issued under Section 5A of the Act; or

(ii) the said final product has been exempted absolutely under Section 5A of the Act; and after deducting the said amount from the balance of Cenvat credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service; whether provided in India or exported."

The sub-rule (3)(i) & (ii) of Rule 11 of Cenvat Credit Rules, 2004 clearly stipulates that if a manufacturer opts for exemption from whole of duty of excise leviable on the said final product under a Notification issued under Section 5A of the Act or the said final product has been exempted absolutely under Section 5A of the said Act, he shall be required to pay an amount equivalent to the Cenvat credit taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in the stock and after deducting the said amount from the balance of Cenvat credit, if any lying in his credit, the balance if any still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export or for payment of Service Tax on any output service, whether provided in India or exported. The Notification No. 30/2004-C.E. provides for exemption from whole of duty and therefore Government finds that the excess Cenvat credit lying in balance of Rs. 24,04,772/- shown as opening balance in June 2006 should have lapsed as on 01.03.2007 when sub-rule (3) of Rule 11 of the Cenvat Credit Rules, 2004 was introduced on a subsequent date. Government also observes that even if they had opted for the benefit of Notification before 1.3.2007, they were required to expunge such credit when the rules were amended and the sub-rule (3) of Rule 11 of the Cenvat Credit Rules, 2004 was introduced. It is also on record that the Central Excise duty paid by the Applicant for the impugned exports for which they claimed rebate was paid out of such accumulated Cenvat Credit as on 01.06.2006 which should have lapsed w.e.f. 01.03.2007 as explained hereinabove. Since there was no accumulation of Cenvat credit validly in law, there was no question of duty being paid therefrom.

9. Government finds that the Circular No.795/28/2004-CX dated 28.07.2004 which allows the manufacturer to avail both Notification Nos. 29/2004-C.E. and 30/2004-C.E. simultaneously. Even in this circular, at clarification to issue No. 2, it was clarified that for manufacturers who had pre-budget stock of inputs (or stock of semi-finished or finished goods which contained inputs) on which credit had already been availed, they can

continue to pay duty on the finished goods made therefrom at post budget rates or he can reverse the credit amount and avail full exemption on the finished goods. As the Applicant had opted benefit of Notification No.30/2004-CE from 09.07.2004 onwards and availed exemption from payment of duty, they were required to reverse the entire Cenvat credit amount before opting for exemption under the said Notification.

10. Government finds that though the Applicant had availed the Cenvat Credit accumulated for the period prior to 01.05.2006 and when the Cenvat Credit rules were amended and the sub-rule (3) of Rule 11 of the Cenvat Credit Rules, 2004 was introduced, they opted for the exemption from payment from duty vide Notification No. 30/2004-CE continuously for the years onwards after 01.05.2006. Hence, they were bound to follow the sub-rule (3) of Rule 11 of the Cenvat Credit Rules, 2004 which they failed to do.

11. Further, Government observes that the Applicant has submitted that

> *"(B) IN ANY CASE REFUND OF RS.4,84,740/- IS TO BE ADMISSIBLE-*
>
> *1. Without prejudice to above it is submitted that the appellant has taken the fresh CENVAT credit of Rs. 4,84,740/- in December 2011 on the input used in the exported goods and made the payment of duty from the said credit on the exported goods Rs.6,17,003/- in December 2011. So to the extent of Rs.4,84,740/-, payment of duty on exported goods made from the fresh Cenvat credit instead of the balance of Cenvat credit carried forward from 30.04.2006. The payment of duty from the carried forwarded balance is to the extent of only Rs. 1,32,263/-(Rs. 6,17,003/- minus 4,84,740/-).*

Government finds that the instant case, the Applicant had the option of availing Notification No. 29/2004-CE and 30/2004-CE simultaneously and to maintain separate Cenvat Credit Account. But they had opted to avail exemption from the payment of duty under Notification 30/2004-CE continuously for the years onwards after 01.05.2006, all the conditions stipulated under the sub-rule (3) of Rule 11 of the Cenvat Credit Rules, 2004 were required to be followed by them. Further, the Applicant in the Revision Application has not submitted any records to show that they had

maintained two separate Cenvat Credit Accounts under Notification No. 29/2004-CE and 30/2004-CE.

12. Similarly, the facts of the case of M/s HMT & Ors Vs CCE, Panchkula, 2008-TIOL-1884-CESTAT-DEL-L.B. wherein the Larger Bench decision of the Tribunal was confirmed by the P & H High Court. The Court after referring to various judgments of the Tribunal and High Courts and more particularly placing reliance on the Apex Court decision in the case of *Dai Ichi Karkaria* 1999 (112) E.L.T. 353 (S.C.) held that it is not a matter of dispute that the assessee has paid the duty on inputs used in the indicated manufacturing of final goods, the assessee has maintained separate accounts/record, duly entered credit of duty-paid on the inputs in manufacture of final goods and validly availed the Cenvat credit. Therefore, the same cannot be reversed on the ground that the final product were subsequently exempted from tax. Whereas in the instant case, the option of availing either Notification No. 29/2004-CE or 30/2004-CE was very much available to the Applicant from the beginning and once they had opted to avail exemption from the payment of duty under Notification 30/2004-CE continuously for the years onwards after 01.05.2006, all the conditions stipulated under the sub-rule (3) of Rule 11 of the Cenvat Credit Rules, 2004 were required to be followed by them. Moreover, Hon'ble Tribunal in the said Order had not gone into the submission of the Ld. Advocate that the Notification No. 10/2007-C.E. (N.T.), dated 01.03.2007 inserted sub-rule (3) to Rule 11 of Rules 2004, is a specific provision for reversal of credit because such issue was not in the referral order, hence distinguished.

13. In view of the forgoing discussion Government holds that as the Applicant had opted for benefit of exemption Notification No.30/2004 CE continuously for the years onwards after 01.05.2006, the Cenvat Credit balance carried forward in their Cenvat accounts lapsed after insertion of sub-rule (3) of Rule 11 of Cenvat Credit Rules, 2004 w.e.f. 01.03.2007 since the Applicant availed total exemption on all their final products during the aforesaid period and as such the duty paid from such lapsed Cenvat Credit on the said exported goods at a much later date is not a payment of duty

and therefore their rebate claims were rightly held inadmissible by the Commissioner(Appeals).

14. Reliance is placed on the judgment of the Hon'ble Bombay High Court in the case of Union of India vs. Rainbow Silks[2011(274)ELT 510(Bom)]. In that case their Lordships were dealing with a case where the merchant exporter-respondent had claimed rebate in respect of goods where the manufacturer of the exported goods was found to have availed CENVAT credit on the basis of bogus documents. The Hon'ble High Courts observations regarding the inadmissible CENVAT credit are reproduced below.

> *"7. ....The contention of the Revenue is that under Rule 18 of the Cenvat Credit Rules, 2002, rebate can be granted of excise duty paid on goods exported. According to the Revenue, in these cases no excise duty was as a matter of fact paid. Cenvat credit was accumulated on the basis of fraudulent documents of bogus firms and such credit was utilised to pay duty. Since there was no accumulation of Cenvat credit validly in law, there was no question of duty being paid therefrom. This submission warrants serious consideration and the Revisional Authority would have to apply its mind to it. In that view of the matter, we find that the approach of the Revisional Authority is unsustainable."*

Government observes that the fundamental principle which the Hon'ble High Court has endorsed through the judgment cited supra is that rebate under Rule 18 can only be granted of excise duty *paid* on goods exported. In the present case, the CENVAT credit balance available in their account was to lapse at the time of opting for complete exemption on their final product. However, the Applicant has chosen to not adhere to the requirement of the rules and continued to retain a very large amount of such CENVAT credit. Under the provisions of the Act, it is open to the manufacturer to pay duty through CENVAT credit account by debit entry. However, if any inadmissible CENVAT credit or CENVAT credit which should correctly have lapsed is continued to be retained and if such amount is utilized for the purpose of payment of the Central Excise Duty, it would mean that the appropriate duty has not been paid and the consequences of non-payment of duty would follow. The observation made by their Lordships that *"Since there was no accumulation of CENVAT credit validly in law, there was no question of duty*

being paid therefrom." is squarely applicable to the facts of the present case. In the circumstances where the exported goods are clearly non-duty paid, it is evident that the question of rebate being sanctioned would not arise.

15. In view of the above discussions and findings, Government upholds the impugned Order-in-Appeal No 62/2013 (Ahd-II)CE/AK/Commr(A)/Ahd dated 12.03.2013 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad as proper and legal.

16. The Revision Application filed by the Applicant is dismissed being devoid of merit.

Shrawan 26/7/21
(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No.252/2021-CX (WZ)/ASRA/Mumbai Dated 26.07.2021

To,
M/s Ahinsa Spinners,
Survey No. 36 to 58 (Palki),
Village: Vasna Iyava,
Sadand Viramgam Highway,
Sanand,
Ahmedabad – 382110

Copy to:
1. The Commissioner of Goods & Service Tax, Ahmedabad North, Custom House, 1st floor, Navrangpura, Ahmedabad – 380 009.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare copy