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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. 195/778/12-RA

4005

Date of Issue:

26.08.2020

ORDER NO. 292/2020-CX (SZ) /ASRA/MUMBAI DATED 03.08.2020
OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL
EXCISE ACT, 1944.

Applicants : M/s K.P.R. Mills Ltd.,
181, Kollupatalayam,
Arasur, Coimbatore- 641 407.

Respondents : Commissioner of GST & Central Excise, Coimbatore.

Subject : Revision Application filed, under Section 35EE of
Central Excise Act, 1944 against the Order-in-Appeal
CMB-CEX-000-APP-M126-12 dated 29.05.2012 passed by
the Commissioner (Appeals), Central Excise, Customs &
Service Tax, Coimbatore.



ORDER

This Revision Application has been filed by M/s K.P.R. Mills Ltd., 181, Kollupatalayam, Arasur, Coimbatore- 641 407 (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. CMB-CEX-000-APP-M126-12 dated 29.05.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Coimbatore.

2. The Applicant is engaged in the manufacture of Cotton & Blended Textile goods. All the goods of cotton not containing any other textile materials were totally exempted from Excise Duty vide Sr. No. (2) of Notification No. 58/08 CE dated 07.12.2008. Excise duty on the above goods was re-imposed on 07.07.2009 vide Notification No. 11/2009 CE dated 07.07.2009. Hence, all goods of cotton not containing any other textile material and falling under various chapters from 56 to 63 of Central Excise Tariff Act, 1985 were totally exempted from Central Excise Duty. However, the applicant had taken cenvat credit on inputs / input services / capital goods and utilized the Cenvat Credit @ 8% of export value and claimed the cash rebate of credit so utilized resulting in erroneous sanction and payment of cash rebate of Rs. 26,14,924/- (Rupees Twenty Six Thousand Fourteen Thousand Nine Hundred Twenty Four Only). The Additional Commissioner, Central Excise, Coimbatore Commissionerate issued a Show Cause Notice to the applicant and demanded the rebate sanctioned erroneously along with interest.

3. The said demand was confirmed by the adjudicating authority vide Order in Original No. 11/2011-(ADC) dated 26.09.2011. The adjudicating authority observed that :

3.1 The impugned goods were exempted under Notification No. 29/2004-CE dated 09.07.2004 as amended by Notification No. 58/2008-CE dated 07.12.2008 during the period of dispute i.e. 07.12.2008 to 06.07.2009.

3.2 The payment of duty under Notification No. 59/2008-CE dated 07.12.2008 on the exempted cotton knitted garments which were exported during the period 07.12.2008 to 06.07.2009 is unwarranted.

4. Aggrieved, the Applicant then filed appeal with the Commissioner (Appeals), Central Excise, Customs & Service Tax, Coimbatore who vide Order-in-Appeal-No. CMB-CEX-000-APP-126-12 dated 29.05.2012 rejected their appeal and upheld the



Order-in-Original dated 26.09.2011. The Appellate Authority while passing the impugned order observed that :-

4.1 The Notification No. 29/2004-CE dated 09.07.2004 as amended by the Notification No. 58/2008-CE dated 07.12.2008, provides absolute exemption to cotton yarn. Hence in view of provisions in Section 5A(1A) of Central Excise Act, 1944, the applicant could not have paid duty at all and thereafter claimed rebate under Rule 18 of Central Excise Rules, 2002. Thus applicant cannot disclaim the benefit of exemption notification and pay duty and claim rebate thereafter.

4.2 As per the Board's circular No.937/27/2010-CX dated 26.11.2010 it is clarified that in view of specific bar provided under Sub Section 1A of Section 5A of Central Excise Act, 1944, the manufacturer cannot opt to pay the duty in respect of unconditionally fully exempted goods and he cannot avail the Cenvat credit of the duty paid on the inputs.

5. Aggrieved, the Applicant then filed the instant Revision Application on the following grounds:

- 5.1 Cotton knitted garments were not exempted during the material period. As per the Notification No. 59/2008-CE dated 07.12.2008 Cotton yarn is chargeable to a duty at the rate of 5% advalorem.
- 5.2 The Cotton knitted garments are not exempted goods as they are chargeable to an effective rate of duty of 4% adv under notification No. 59/2008-CE. The tariff rate of cotton yarn is 8%.
- 5.3 The credit of duty availed on capital goods cannot be denied on the ground that final products manufactured were exempted for a particular period. In the instant case the capital goods were not used exclusively in the manufacture of exempted goods.
- 5.4 The claim of rebate did not suffer from any legal infirmity. The rebate sanctioned is sought to be demanded on the ground that the availment of Cenvat Credit is not in order.
- 5.5 The TRU in its letter Ref. No. 334/1/2008-TRU dated 29.02.2008 had clarified that the rate beneficial to the assessee would have to be extended.



5. A personal hearing in the case was held on 21.11.2019. Shri Ganesh K. Iyer, Advocate appeared on behalf of the Applicant. The Applicant reiterated the ground of Revision Application and pleaded for setting aside the Orders-in-Appeal. No one appeared on behalf of the respondent.

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. The issue in dispute in the current Revision Applications is that when two notification are operative simultaneously for either payment of duty or availing exemption namely Notification No. 58/2008-CE dated 7.12.2008 and Notification No. 59/2008-CE dated 07.12.2008, whether the Applicant has the choice to opt any one notification.

8. Government observes that the Applicant claimed rebate of the duty paid on exported goods under Rule 18 of CER. The Applicant filed a rebate claim for a total amount of Rs. 26,14,924/- for goods exported and the Department rejected the rebate claims on grounds that during the period 07.12.2008 to 06.07.2009 the goods manufactured by the Applicants were exempted from duty vide Notfn 58/2008 and that the Applicant had no option to pay 4% duty under Notfn No. 59/2008.

9. The Government finds that in the instant case, the Applicant have cleared the goods i.e. Cotton Yarn / fabrics / garments falling under CH-52 for export on payment of duty under Notification No. 59/2008 CE dated 07.12.2008 which provides for concession rate of duty for Cotton Yarn falling under Chapter 5205 of the First Schedule to the Central Excise Tariff Act, 1985. The Government observes that Notification No. 29/2004 dated 09.07.2004 was amended vide Notfn 58/2008 dated 07.12.2008 and the rate of duties were substituted from 4% to Nil for the impugned goods. Further, on 07.07.2009, the Notification No. 29/2004 dated 09.07.2004 was once again amended vide Notification No. 11/2009-CE dated 07.07.2009, whereby the effective rate of duty of the said goods was substituted from Nil to 4%. However, the Notification No. 59/2008-CE dated 07.12.2008 was still in existence whereby the impugned goods were attracting 4% duty. In view of the Government finds that the applicant had paid duty a applicable rate as



per Notification No. 59/2008-CE dated 07.12.2008 which was in force during the period from 07.12.2008 to 06.07.2009 i.e. the period of amendments made in Notification No. 29/2004-CE dated 09.07.2004 as discussed above.

10. Further, Government observes that in the case of Arvind Ltd Vs UOI [2014 (300) ELT 481 (Guj.), the Hon'ble Gujarat High Court in its order dated 19.06.2013 had held that-

Export rebate- Claim of -Denied, on ground that payment of duty was at the will of the assessee - Export rebate impermissible when assessee was exempt from payment of whole duty but when he paid duty at the time of export permissible - Final products manufactured by petitioner exempted from payment of duty by Notification No. 29/2004-C.E. as amended by Notification No. 58/2008-CE. - However petitioner wrongly availed benefit of concessional rate of duty under Notification No. 59/2008-C.E. which exempted cotton textile products in excess of 4% ad valorem -Thereafter, claims for rebate made - Revenue authorities rejected the claims on ground that payment of duty on final products exported was at will of the assessee - Such orders set aside, as petitioner was not liable to pay in light of absolute exemption granted under Notification No. 29/2004-C.E. as amended by Notification No. 58/2008-C.E. r/w Section 5A(1A) of Central Excise Act, 1944 - 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 - Export rebate claim allowed - Section 5A(1A) and 11B of Central Excise Act, 1944 - Rule 18 of Central Excise Rules, 2002. (paras 9, 10, 11)

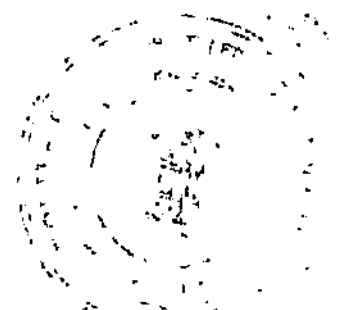
Petitions allowed.

Government finds that the above referred case law / judgment has been upheld by the Hon'ble Supreme Court vide order dated 01.03.2016.

11. The Government finds that in the current case Section 5A(1A) of CEA is not applicable as both the notifications i.e. Notfn 58/2008 and Notfn 59/2008 both dated 07.12.2008 are effective rate of duty/concessional rate of duty whereas one prescribes NIL rate of duty the other one is dutiable. The text of the notifications reads as under :-

Notification No.58/2008 - Central Excise

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby directs that each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table hereto



annexed shall be amended or further amended, as the case may be, in the manner specified in the corresponding entry in column (3) of the said Table, namely :-

TABLE

S. No.	Notification number and date	Amendments
(1)	(2)	(3)
2.	29/2004-Central Excise, dated the 9 th July, 2004	In the said notification, in the Table, in column (4),- (i) for the entry "8%", wherever it occurs, the entry "4%" shall be substituted; (ii) for the entry "4%", wherever it occurs, the entry "Nil" shall be substituted.

Notification No. 59/2008 -Central Excise

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling under the Chapter, heading, sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as are specified in column (2) of the Table below, from so much of the duty of excise leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the Table aforesaid.

Explanation. - For the purposes of this notification, the rates specified in column (3) of the said Table are ad valorem rates, unless otherwise specified.

Table

S.No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Rate
(1)	(2)	(3)
5.	5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211 and 5212	4%

In such situation, the Applicant has the option to decide which notification suitable for them. Here, the Applicant had opted to avail Notification No.

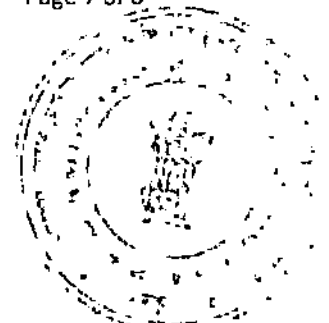


59/2008 dated 07.12.2008 and paid duty at the time of export and thus entitled to the rebate to the duty paid at the time of exporting the under Rule 18 of the CER.

12. The Government also observes that in the case of CCE, Madurai Vs. Eastman Spinning Mills Pvt. Ltd. 2011 (271) E.L.T. 256 (Tri. - Chennai), the Tribunal in its order dated 22.11.2010 had held that-

" 2. I have heard both sides. Initially, the proviso to Notification No. 30/2004, dated 9-7-2004 by which goods falling under specified sub-headings of Chapter 52 of the First Schedule to the CETA, 1985 (the assessee is a manufacturer of cotton yarn falling under one of the specified sub-headings of Chapter 52), provided that nothing contained in the notification would apply to the goods in respect of which credit of duty paid on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002. On the same date of the issue of the above notification viz 9-7-2004 a corrigendum was issued so as to bar the availment of the exemption under the notification by a manufacturer availing input credit only. Therefore, there was no bar to the availment of exemption under Notification No. 30/2004 by a manufacturer availing capital goods credit. This apart, Rule 6(4) of the CENVAT Credit Rules, 2004 bars availment of credit on capital goods used exclusively in the manufacture of exempted goods, while in the present case, the duty on cotton yarn is an optional one enabling a manufacturer to clear the goods either without payment of duty or on payment of duty. Under these circumstances, it cannot be said that capital goods are exclusively used in the manufacture of exempted goods. The assessee paid duty subsequently, namely, during the month of August, 2008 on cotton yarn in terms of Notification No. 29/2004-C.E., dated 9-7-2004 and, therefore, the availment and utilisation of credit for paying duty on capital goods is in accordance with law. I, therefore, uphold the impugned order and reject the appeal."

In view of above, Government opines that the embargo of Notification No. 30/2004-CE in so far as CENVAT credit is concerned is limited to CENVAT credit of duty paid on inputs. The respondent is very well entitled to the benefit of CENVAT credit of duty paid on capital goods. Therefore, there can be no challenge to the availment of CENVAT credit on capital goods. In view of the judgment discussed above and the Board circulars cited supra, the respondent cannot be disqualified from paying duty on the export goods by availing the benefit of Notification No. 29/2004-CE as amended by Notification No. 58/2008 - CE dated 07.12.2008.



Needless to say, payment of duty from the CENVAT account is equitable with duty paid through account current and hence would be admissible as rebate.

13. In view of the above, Government set aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-M126-12 dated 29.05.2012 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Coimbatore.

14. The Revision Application is disposed off in terms of above.

15. So, ordered.

(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No 292/2020-CX (SZ) /ASRA/Mumbai DATED 04.03.2020

To,
M/s K.P.R. Mills Ltd.,
181, Kollupatalayam,
Arasur, Coimbatore- 641 407.

ATTESTED

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Principal Commissioner of GST & Central Excise, 6/7, ATD Street, Race Course Road, Coimbatore- 641 018.
2. The Commissioner of Customs, CGST & Central Excise (Appeals), 6/7, ATD Street, Race Course Road, Coimbatore- 641 018.
3. The Deputy Commissioner of CGST & Central Excise, Tirupur Division, 1st Floor, Kumaran Complex, Tirupur-641 601.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

