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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. 195/72/12-RA / 4093

Date of Issue:

01.09.2020

ORDER NO. 293/2020-CX (SZ) /ASRA/MUMBAI DATED 04.03.2020
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 Sri Vignesh Yarns P. Ltd.,
S. F. No. 11, Avinashi To Annur Road,
Nambiyampalayam, Avinashi Taluk,
Tirupur - 641 670.

Respondents : Commissioner of Central Excise, Coimbatore.

Subject : Revision Application filed, under Section 35EE of
Central Excise Act, 1944 against the Order-in-Appeal
CMB-CEX-000-APP-235/2011 dated 13.12.2011 passed by
the Commissioner (Appeals), Central Excise, Customs &
Service Tax, Coimbatore.

ORDER

This Revision Application has been filed by M/s Sri Vignesh Yarns P. Ltd., S. F. No. 11, Avinashi To Annur Road, Nambiyampalayam, Avinashi Taluk, Tirupur – 641 670 (hereinafter referred to as “the Applicant”) against the Order-in-Appeal No. CMB-CEX-000-APP-235/2011 dated 13.12.2011 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Coimbatore.

2. The Applicant is engaged in the manufacture of Cotton Yarn falling under Chapter S.H. 520511 of Central Excise Tariff Act, 1985 and had filed a rebate claim for the amount of Rs. 2,94,319/- (Rupees Two Lakh Ninety Four Thousand Three Hundred Nineteen Only) in respect of goods exported by them on payment of duty under claim for rebate, under Rule 18 of Central Excise Rules, 2002 (herein after as ‘CER’). The Applicant was issued Show Cause Notice for rejection of the claim for rebate and was adjudicated by the Deputy Commissioner, Central Excise, Division-Tirupur vide Order-in-Original No. 138/2010 dated 28.12.2010 who rejected the claims on following grounds :

2.1 The impugned goods were exempted under Notification No. 58/2008-CE dated 07.12.2008.

2.2 The Government, vide Notification No. 11/2009-CE dated 07.07.2009 has restored the rate of 4% Central Excise duty on Textile & Textile articles, thus enabling the exporters to pay duty on optional basis and subsequently claim it as rebate, the rate of duty on Textile & Textile articles during the period from 07.12.2008 to 07.07.2009, being ‘NIL’, no duty was required to be paid by the applicant.

3. 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-235-11 dated 13.12.2011 rejected their appeal and upheld the Order-in-Original dated 27.12.2010.

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

4.1 The applicant did not opt to pay the Central Excise Duty in spite of the exemption available in the Notification 58/2008-CE dated 07.12.2008. They paid duty as per the provisions contained in Notification no. 59/2008-CE dated 07.12.2008. It is settled issue that when two notification are available. The assessee is at liberty to avail the notification which is beneficial to him.

4.2 If the principle as mentioned in the Order in Appeal is followed, no person can avail the provisions contained in Notification No. 59/2008-CE.

~~4.3 The Notification 59/2008 is latest when compared to Notification 58/2008.~~

4.4 It is the policy of the Government that duty should not be exported along with the goods.

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. 2,94,319/- for goods exported vide two ARE-1s No. 09/11.06.2009, 10/23.07.2009 and 11/27.07.2009 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 falling under CH 5205.11 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 above, 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 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
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(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 is suitable for them. Here, the Applicant had opted to avail Notfn 59/2008 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.

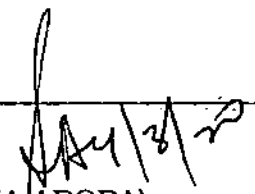
12. In view of foregoing paras, Government holds that detail verification of the rebate by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoices and ARE 1s as produced by the Applicants along with the rebate claim should to be taken into consideration. The Applicant is directed to submit the relevant records/

documents to the original authority in this regard for verification for processing the rebate claims.

13. In view of the above, Government set aside the impugned Order-in-Appeal No. CMB-CEX-000-APP-235/2011 dated 13.12.2011 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Coimbatore and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within four weeks from receipt of this order.

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 293/2020-CX (SZ) /ASRA/Mumbai DATED 04.03.2020

To,
M/s Sri Vignesh Yarns P. Ltd.,
S. F. No. 11, Avinashi To Annur Road,
Nambiyampalayam, Avinashi Taluk,
Tirupur - 641 670.

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.