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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
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Mumbai- 400 005**

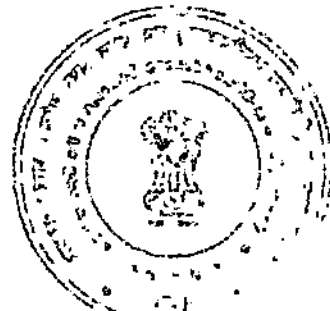
F. NO. 195/481/SZ/2012-RA / 4069 Date of Issue: 22.08.2020

ORDER NO. 295 /2020-CX (SZ) /ASRA/MUMBAI DATED 04.03- 2020 OF THE 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.

Applicant : M/s Super Spinning Mills Limited.
'C' Unit, D. Gudalur,
Dindigul Dist. - 624 620.

Respondent: The Commissioner of CGST & Central Excise, Trichy.

Subject : Revision Applications filed, under Section 35EE(1) of Central Excise Act, 1944 against the Order-in-Appeal No. 30/2012 dated 08.02.2012 passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirappali.



: ORDER :

This revision application has been filed by the M/s Super Spinning Mills Limited, Dindigul (hereinafter referred to as "the applicant") against the Order-in-Appeal No. 30/2012 dated 08.02.2012 passed by the Commissioner of GST & Central Excise (Appeals), Tiruchirappali.

2. The case in brief is that the applicant are engaged in manufacturing of ~~"100% Organic Cotton Yarn", falling under Chapter No. 52052110 of the~~ Central Excise Tariff Act, 1985 and clearing the same for home consumption as well as for export. The applicant had filed rebate claim for Rs. 8,50,095/- (Rupees Eight Lakh Fifty Thousand Ninety Five Only) under Rule 18 of the Central Excise Rules, 2002 for refund of Excise duty paid on the goods exported. The rebate sanctioning authority rejected the rebate claims vide Order in Original No. 01/2011-Rebate dated 21.02.2011 on following grounds :-

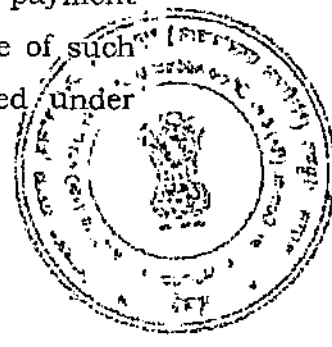
2.1 The goods are exempted under Notification No. 30/2004-CE dated 09.07.2004.

2.2 Since the goods exported by the applicant are exempted under Notification No. 30/2004-CE dated 09.07.2004, the same cannot be treated as excisable goods for the purpose of availing Cenvat Credit.

3. The applicant has preferred an appeal against said order in original on the following grounds :-

3.1 The Cotton Yarn manufactured by them are exempted under Notification No. 30/2004-CE dated 09.07.2004 subject to certain condition and that the Cotton Yarn is also subject to excise duty as per Notification No.29/2004 CE dated 09.07.2004. Hence exemption cannot be forced on them.

3.2 It is undisputed fact that the goods were exported on payment of duty under rebate claim and hence they are entitled for rebate of such duty paid since they have fulfilled all the conditions prescribed under



Notification No. 19/2004-CE (NT) issued under Rule 18 of Central Excise Rules, 2002.

4. The Appellate Authority vide impugned Order in Appeal rejected the appeal filed by the applicant and upheld Order in Original passed by the rebate sanctioning authority. The Appellate Authority has observed that:-

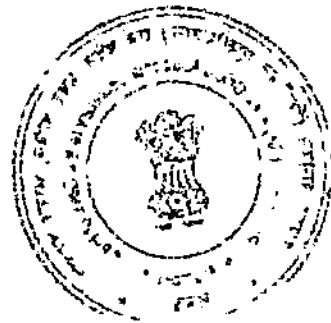
4.1 Board's Circular No. 795/28/2004-CX dated 28.07.2004 had clarified that the benefit of these two notifications can be availed simultaneously provided the manufacturer maintains separate books of accounts for goods in respect of which benefit of notification No. 29/2004-CE(NT) dated 07.09.2004 is availed. It is not the case of the applicant that the conditions of the said circular are satisfied and indicated availment of said notification in all the relevant documents and payment of duty made correctly.

4.2 Apparently there is only reference to Notification No. 30/2004-CE(NT) dated 09.07.2004 in the OIO and the lower authority observed that the goods were exempted under the said notification. This has not been effectively rebutted by the applicant.

4.3 In the absence of the documentary evidence regarding payment of duty under a notification which would have been duly indicated in the statutory records and invoices etc. and documentary evidence regarding compliance with Board's instructions in this regard, the conclusion of the lower authority that the appellant made voluntary payment on exempted goods sustains.

4.3 When the goods are exempted under notification, the payment made, if any, is only voluntary payment made.

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds :-



5.1 It is factually incorrect on the part of the appellate authority to hold that they have not stated anything in their reply that the duty was discharged in terms of Notification No. 29/2004-CE(NT) dated 09.07.2004.

5.2 The cotton yarn is exempted under Notification No. 30/2004 only subject to certain conditions. The cotton yarn is also subject to excise duty as per Notification No. 29/2004. Therefore it is legally incorrect to say that the cotton yarn as a whole is exempted from excise duty vide Notification No. 30/2004.

5.3 As explained above the cotton yarn is subject to duty as per Notification No. 29/2004 even though they have not explicitly referred to this Notification in their to SCN. It cannot be assumed by the appellate authority that they have not raised any plea with regard to the dutiability of the goods.

5.4 The applicant relied upon case law Tirupati Cigarettes Pvt. Ltd. Vs. CCE, Ahmendabad- 1997(94) ELT 585 (Tri) wherein it was held that every manufacturer cannot be compelled to have recourse to the benefit of a notification. It is always open to the manufacturer to disregard a Notification and opt to pay tariff rate of duty.

5.5 The Hon'ble Tribunal in the case of Everest Converters Vs. CCE, Calcutta-II - 1995(80) ELT 91 had held that the Notification having character of exemption cannot be forced upon the assessee if it does not suits him.

5.6 It is evident from the Notification No. 19/2004-CE(NT) issued under Rule 18 of Central Excise Rules, 2002 that when excisable goods are exported on payment of duty, the manufacturer is entitled for rebate of such duty paid. The applicant has exported cotton yarn which a excisable goods and they have satisfied the conditions and fulfilled all procedures prescribed under said notification.



6. A personal hearing was held in this case on 21.11.2019. Shri M. Saravanan, Consultant had attended the same on behalf of the applicant. He reiterated the grounds of appeals and made written submission thereof. The respondent did not attend the personal hearing.

7. 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.

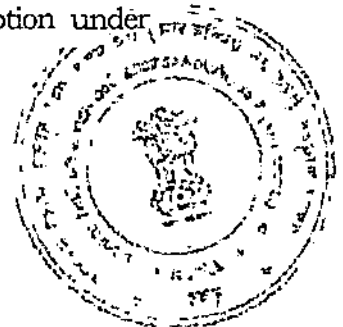
8. In this case, the department has contended that the applicant was compulsorily required to avail complete exemption of duty under Notification No.30/2004-CE and hence, the export of goods on payment of duty under Notification No.29/2004- CE was not correct. In this regard Government observes that the Notification No. 29/2004-C.E., dated 9-7-2004, grants partial exemption to goods manufactured and duty is chargeable @ 4% or 8%, and Notification No. 30/2004-C.E., dated 9-7-2004 grants full exemption from payment of central excise duty, subject to the condition that no cenvat credit is taken on the inputs consumed in the manufacture of final product. The applicants could avail both the aforesaid Notifications simultaneously in terms of clarification issued by the C.B.E.C. vide its Circular No. 795/28/2004-CX., dated 28-7-2004. The basic condition for availing exemption under Notification No. 30/2004-C.E., dated 9-7-2004 was that the applicant is not allowed to take Cenvat Credit on the inputs utilized for manufacturing/processing of the finished goods. Whereas for availing benefit under Notification No. 29/2004-C.E., dated 9-7-2004, there was no such condition of availing or not availing of the Cenvat Credit on the inputs utilized for manufacturing/processing of the finished goods.

8.1 As per Board Circular No. 795/28/2004-CX dated 28-7-2004, the manufacturer can avail both the Notifications No. 29/2004-C.E., and 30/2004-C.E., both dated 9-7-2004 simultaneously provided the manufacturer maintains separate set of accounts for goods in respect of which benefit of Notification No. 29/2004-C.E., dated 9-7-2004 is availed and similarly, for goods in respect of which benefit of Notification No. 30/2004-C.E. dated 9-7-2004 is availed. The C.B.E.C. further issued



a Circular No., 845/3/2006-CX. dated 1-2-2007 to clarify the provision of simultaneous availment of Notification Nos. 29/2004-C.E. and 30/2004-C.E. both dated 9-7-2004 wherein it has been clearly mentioned that non-availment of credit on inputs is a pre-condition for availing exemption under this Notification (30/2004-C.E., dated 9-7-2004) and if manufacturers avail input cenvat credit, they would be ineligible for exemption under this Notification (30/2004-C.E., dated 9-7-2004). However, Board further allowed the availment of proportionate credit on the inputs utilized in the manufacture of goods cleared on payment of duty (under Notification No. 29/2004-C.E., dated 9-7-2004) should be taken at the end of the month only. The Government, therefore, infers that the purpose of this clarification was only to check that the manufacturer should not claim cenvat credit on the inputs and avail exemption under Notification No. 30/2004-C.E., dated 9-7-2004.

8.2 During the relevant period, the applicant cleared the goods for export after paying excise duty in terms of Notification No. 29/2004-C.E., dated 9-7-2004 and filed rebate claims under Rule 18 of the Central Excise Rules, 2002. The applicant were entitled to avail both the Notification 29/2004-CE and 30/2004-C.E., simultaneously provided they followed the provisions of above said CBEC Circulars. The lower authorities have drawn conclusion that as the applicants were not claiming the cenvat credit on the inputs used in the manufacture of the exported goods, hence they were working under exemption Notification No.30/2004-C.E., dated 9.7.2004. The Government observes that the applicant have availed Cenvat Credit on capital goods used in manufacture of export product. The Government finds that the option is with the manufacturer to avail or not to avail cenvat credit on the inputs as the availment of cenvat credit is a beneficial scheme and there is nothing in the Notification No. 29/2004-C.E., dated 9-7-2004 for the manufacturer to compulsorily avail cenvat credit on the inputs. There is bar only on for-availment of Cenvat input credit under Notification No. 30/2004-C.E., dated 9-7-2004. As such, the lower authorities have erred in holding that the applicants having not availed cenvat credit will have to opt for exemption under



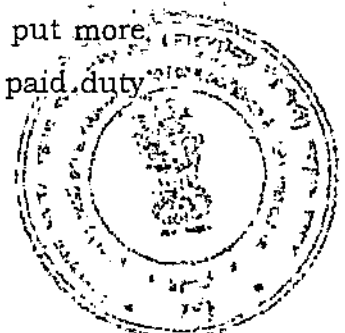
11. Resultantly, both the petitions are allowed quashing and setting aside the orders impugned in both the petitions by further directing the respondents to grant the petitioner of Special Civil Application No. 10887 of 2012 rebate of Rs. 3,15,63,741/- (Rupees Three Crore Fifteen Lac Sixty Three Thousand Seven Hundred Forty One only) and Rs. 39,59,750/- (Rupees Thirty Nine Lac Fifty Nine Thousand Seven Hundred Fifty only) to the petitioner of Special Civil Application No. 10891 of 2012, by calculating interest thereon under Section 11BB of the Central Excise Act, 1944, within a period of eight weeks from the date of receipt of a copy of this judgment.

12. Rule is made absolute in each petition to the aforesaid extent. There shall be, however, no order as to costs.

10. It would be relevant to note that the Hon'ble Apex Court [2017(352)ELT A21(SC)] has dismissed the Special Leave Petitions filed by the Union of India against the above judgment of the Hon'ble Gujarat High Court and therefore the matter has attained finality. The said case involved a situation where that assessee had availed the benefit of two unconditional exemption notifications. The Hon'ble Gujarat High Court after careful consideration of the facts, came to the conclusion that the assessee would be entitled to avail either of the two notifications and may opt to pay duty on the goods; i.e. to avail the benefit of the notification which it considers more beneficial. In this case, the assessee chose to avail the benefit of Notification No. 59/2008-CE which levied effective rate of duty whereas Notification No. 29/2004-CE as amended by Notification No. 58/2008-CE fully exempted the same goods. The inference that can be drawn from this judgment is that even when there are two notifications which are unconditional in nature, the assessee would still have the option to pay duty and claim rebate of such duty paid. In the light of the above referred judgment of the Hon'ble High Court, it would follow that the applicant cannot be compelled to avail the benefit of the exemption notification which exempts the goods cleared for export from the whole of the duty of excise.

11. The Government finds that the issue pertaining to the ambit of the provisions of sub-section (1A) of Section 5A of the CEA, 1944 is also relevant

to the facts of the case. In the instant case, the Department has put more emphasis to the contention that the applicant ought not to have paid duty



while they were eligible to the benefit of exemption under Notification No. 30/2004-CE. The Government finds that Sub-section (1A) of Section 5A of the Central Excise Act, 1944 which is pertinent to the instant issue stipulates as under:-

"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely the manufacturer of such excisable goods shall not pay the duty of excise on such goods."

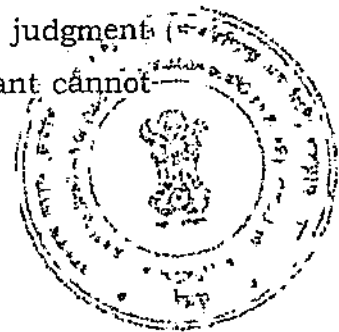
The above provision insists that the exemption granted absolutely from whole of duty of excise has to be availed and in that case there is no option to pay duty. However, in the instant case, goods are exempted under ~~Notification No. 30/2004-C.E. (N.T.) subject to condition that no cenvat~~ credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2002. Consequently, the Notification No. 30/2004-CE does not pass muster as an unconditional notification. Now given that the Notification No. 30/2004-C.E. (N.T.) is a conditional one, the applicant was not under any statutory compulsion to avail it. Conversely, even if it is assumed for a moment that Notification No. 30/2004-CE is an absolute exemption, the contention that the applicant would be obligated to avail it has been rejected by the Hon'ble Gujarat High Court in the case of Arvind Ltd. Also, as per C.B.E. & C. Circular No. 845/03/06-CX dated 1-2-2007 and 795/28/2004-CX, dated 28-7-2004, both the Notifications can be availed simultaneously. The Government, therefore, holds that there was no restriction on the applicant to pay duty under Notification No. 29/2004-C.E. (N.T.)

12. It is construed from the judgment of the High Court in the case of Arvind Ltd. [2014 (300) E.L.T. 481 (Guj.)] that when there are two unconditional exemption notifications which co-exist, there cannot be any compulsion on the assessee to avail the one which fully exempts excisable goods because such an interpretation would render the exemption with the



higher rate of duty to be redundant. All exemptions issued under Section 5A of the CEA, 1944 are issued in the public interest with some specific legislative intent and cannot be rendered inconsequential. The sub-section (1A) of Section 5A of the CEA, 1944 would have compelling force only when there is a single absolute exemption applicable to an assessee. In the instant case, there are two competing exemption notifications - Notification No. 29/2004-CE is unconditional in nature whereas Notification No. 30/2004-CE is conditional in nature. Against the backdrop of the judgment cited supra which holds that the exemption under an unconditional exemption notification is not binding on an assessee vis-à-vis another exemption notification which unconditionally grants partial exemption, there can be no case for compelling the applicant in the present case to avail the benefit of a conditional exemption notification such as Notification No. 30/2004-CE. Without prejudice to the judgment of the Hon'ble Gujarat High Court, the fact that the Board had issued Circular No. 795/28/2004-CX., dated 28.07.2004 & Circular No. 845/3/2007-CX., dated 01.02.2007 which ratified the simultaneous availment of exemption Notification No. 29/2004-CE and Notification No. 30/2004-CE cannot be lost sight of. The said circulars have also laid down the procedure to be followed in such a situation by maintaining separate accounts of inputs. Needless to say, the circulars issued by the Board are binding on the field formations.

13. The other major contention of the Department is that the applicant has chosen to avail the benefit of Notification No. 29/2004-CE in spite of being eligible for the benefit of Notification No. 30/2004-CE with the intent to encash the CENVAT credit availed on capital goods. In this regard, Government observes 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 applicant 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 applicant cannot

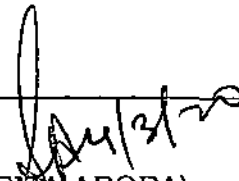


be disqualified from paying duty on the export goods by availing the benefit of Notification No. 29/2004-CE. Needless to say, payment of duty from the CENVAT account is equitable with duty paid through account current and hence would be admissible as rebate.

14. In view of above discussions, the Government sets aside the impugned Orders-in-Appeal and remands the cases back to original authority to sanction the rebate claim after verifying that the applicant has followed the procedure laid down in said CBEC circulars.

15. Revision application is disposed off on above terms..

16. So, ordered.


(SEEMA ARORA)

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

ORDER No 295 /2020-CX (SZ) /ASRA/Mumbai DATED 04.03.2020

To,

ATTESTED

M/s Super Spinning Mills Limited.
'C' Unit, D. Gudalur,
Dindigul Dist. - 624 620.

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

Copy to:-

1. The Commissioner of CGST & Central Goods, No. 1, Williams Road, Cantonment, Trichy - 620 001.
2. The Commissioner of Customs & Central Excise (Appeals) No. 1, Williams Road, Cantonment, Trichy - 620 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard file.
5. Spare Copy.

