SPEED POST

F.No. 195/62-64/2018-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. 25/2/21....

Order No. 32-34/2021-CX dated 25-02-2021 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 Order-in-Appeal No. CHD-EXCUS-001-APP-148-192-17-18 dated 29.12.2017 passed by the Commissioner (Appeals), CGST, Chandigarh.

Applicants : M/s Birla Textile Mills, Solan.

Respondent : Commissioner of CGST, Shimla.

****

ORDER

Three revision applications nos. 195/62-64/2018-RA dated 03.04.2018 have been filed by M/s Birla Textile Mills, Solan (hereinafter referred to as the applicant) against Order-in-Appeal Nos. CHD-EXCUS-001-APP-148-192-17-18 dated 29.12.2017 passed by the Commissioner of CGST (Appeals), Chandigarh, wherein Orders-in-Original nos. 2174-2193/AC/R/Baddi/2016 dated 23.01.2017, 2144-2156/AC/R/Baddi/2016 dated 19.01.2017 and 2273-2284/AC/R/Baddi/2016 dated 30.01.2017 have been upheld.

2. Brief facts of the case are that the applicants are engaged in the manufacture and export of Yarn falling under Chapter 52 of the Central Excise Tariff Act, 1985. The finished goods were exported under claim of rebate of final stage duty paid under Rule 18 of Central Excise Rules, 2002. Subsequently, rebate claims were filed by the applicants which were rejected by the original adjudicating authority on the ground that higher rate of drawback had been claimed by the applicant and as such grant of rebate of excise duty would amount to double benefit. Commissioner (Appeals), vide the impugned Orders-in-Appeal, has upheld the Orders-in-Original.

3. Being aggrieved, the applicants have filed these revision applications on the ground that claiming higher rate of drawback does not bar them from claiming rebate of duty paid on final products that were exported. They had not availed any CENVAT credit on inputs and input services used for manufacturing the final products but had paid duty from CENVAT credit account of capital goods. Drawback always refers to input stage duties/taxes and the bar is on availing input duty rebate and not on finished goods duty rebate.

4 Personal hearing was held on 24.02.2021. Sh. S. C. Kamra, Advocate, appeared for the applicants and placed on record a

compilation dated 24.02.2021. Sh. Kamra reiterated contents of the revision application and supported it with the case laws relied upon. No one attended the hearing for the respondents and no request for adjournment has been received. Hence, the matter is taken up for decision on the basis of facts available on record.

5.1 The Government has examined the matter. It is observed that the issue involved is squarely covered by the judgment of Hon'ble High Court of Madras, in the case of M/s Raghav Industries [2016 (334) E.L.T. 584 (Mad.)] wherein in Para 13 it has been held:

"While sanctioning rebate, the export goods, being one and the same, the benefits availed by the applicant on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules, 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the applicant had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit."

5.2 The judgement in Raghav Industries (supra) has been followed by the Hon'ble Madras High Court in the case of M/s Kadri Mills (CBE) Ltd. [2016(334) ELT 642 (Mad.)]. Though appeals are said to be pending against these judgments, there is no stay on these judgments by any higher judicial authority.

5.3. The applicants have relied on the Hon'ble Supreme Court's judgment in the case of M/s Spentax Industries Ltd. Vs. CCE [2015(324) ELT 686]. It is observed that the judgment in Spentax Industries is an authority on the issue that the exporter is entitled to

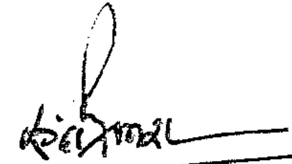
both the rebates under Rule 18 of Central Excise Rules, 2002 i.e. the rebate of duty paid on exported goods and the rebate of duty paid on materials used in the manufacture or processing of such goods and not one kind of rebate only. The issue involved in the present case, on the other hand, is regarding admissibility of rebate under Rule 18 when higher rate of drawback has been availed in respect of the exported goods, under the Drawback Rules, which was not the issue before the Apex Court in Spentax Industries. Further, Hon'ble Madras High Court has, in Raghav Industries (supra), clearly distinguished the judgment in the case of Spentax Industries (supra). The Government's Order No. 465/2011-CX dated 09.05.2011 in the case of M/s A. G. Enterprises and Order No. 163-166/2017-CX dated 14.09.2017 in the case of M/s Gokul Auto Pvt. Ltd. have also been relied upon. It is observed that the issue in these cases is about admissibility of rebate of excise duty on inputs when the benefit of drawback had been claimed on the exported goods. Another case cited is that of M/s Four Star Industries (GOI Order No. 11/2014-CX dated 03.01.2014) where the issue relates to availability of rebate when only customs portion drawback has been availed. In the case of M/s Ginni Filaments Ltd. (Order No. 126-129/17-CX dated 11.09.2017) relied upon by the applicant, the issue involves simultaneous availment of Notifications Nos. 29/2004-CE (NT) and 30/2004-CE (NT) both dated 09.07.2004. In this case the duty on final products was paid from accumulated CENVAT credit and not from CENVAT credit on capital goods as is the case here. Thus, the case laws relied upon by the applicant are not applicable in the facts of the present case.

5.4 Even earlier, the Government in its order No. 1237/2011-CX dated 21.09.2011 in the case of Sabre International Limited Vs. CCE, Noida, reported as 2012(280) ELT575(GOI), has held that allowing drawback on both Customs & Central Excise portion and rebate of duty on final product will amount to double benefit. The Government has also held the same view in its Order No. 4394-97/18-Cx dated 13.07.2018 in the case of M/s Anshupati Textiles,

Order No. 195/795/2010 dated 04.09.2018 in the case of M/s RSWM and in Order No. 69-96/19-CX dated 09.10.2019 in the case of M/s. Maharaja Shree Umaid Mills Ltd., Pali, Rajasthan. Identical view has been taken by the Government, recently, in Order No. 05-17/21-CX dated 28.01.2021 and Order No. 18-27/2021-CX dated 08.02.2021, in the cases pertaining to M/s Auro Weaving Mills and others.

6. In view of the above, the Government finds no infirmity in the orders of lower authorities rejecting the rebate claims under Rule 18 of Central Excise Rules, 2002.

7. The revision applications are rejected.



(Sandeep Prakash)
Additional Secretary to the Government of India

M/s Birla Spinning Mills (Unit of Sutlej Textiles Ltd.)
Sai Road, Bhtouli Khurd, P.O. Baddi,
Distt. Solan (Himachal Pradesh).

G.O.I. Order No. 32-34/21-CX dated 25-2-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Shimla, (Camp at Chandigarh), C.R. Building, Plot No. 19-A, Sector – 17-C, Chandigarh- 160 017.
2. Commissioner (Appeals), CGST, Chandigarh.
3. Sh. S.C. Kamra & Co., Advocates & Solicitors, B-2/210 (Basement), Safdarjung Enclave, New Delhi- 110029.
4. P.S. to A.S. (Revision Application)
5. Guard file,
6. Spare copy.

ATTESTED

(Ashish Tiwari)
ASSISTANT COMMISSIONER (R.A.)