REGISTERED
SPEED POST

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, Cuff Parade,
Mumbai- 400 005

F. NO. 198/11/15-RA/5835 Date of Issue: 06/10/2021

ORDER NO. 326/2021-CX (WZ)/ASRA/MUMBAI DATED 23.09.2021 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..

Applicant : Commissioner of Central Excise, Ahmedabad-III

Respondent : M/s Bharat Vijay Mills

Subject : Revision Applications filed under section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. AHM-EXCUS-003-APP-121-14-15 dated 16.12.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad.

ORDER

This Revision Application is filed by Commissioner of Central Excise, Ahmedabad-III (hereinafter referred to as "the Applicant") against the Order-in-Appeal No. AHM-EXCUS-003-APP-121-14-15 dated 16.12.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad

2. The brief facts of the case are that the M/s Bharat Vijay Mills, Textile Division of M/s Sintex Industries Ltd, Seven, Garnala, Kalol, Dist Gandhinagar (herein after as 'Respondent') is engaged in the manufacturer of cotton yam, processed cotton fabrics, processed man made fibre falling under 52,53,55, & 58 of the schedule to Central Excise Tariff Act, 1985.

(i) The Respondent had exported goods 100% Cotton Fabrics/Garments, that are exempted vide Notification No. 29/2004-CE dated 09.07.2004 as amended vide Notification No. 58/2008-CE dated 07.12.2008. They had paid the duty on the goods exported on their own volition by utilizing Cenvat credit availed on the inputs used in the manufacturer of said exported goods.

(ii) The Respondent then filed 129 rebate claims amounting to Rs. 62,97,781/- in respect of ARE-1s filed by the Respondent for clearance of goods for export under claim of rebate on payment of duty during the period from 07.12.2008 to 06.07.2009.

(iii) 129 Show Cause Notices were issued to the Respondent against the above said rebate claims on the basis that sub section (1A) to Section (5A) of the Central Excise Act, 1944 stipulates 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.

Further the provisions of Section 5A(1A) would get attracted in case of exemption from the whole of duty has been granted absolutely. Therefore, applying the provisions of subsection (OA) Section 5A(1A) of the Central Excise Act, 1944 it was observed that the Respondent had no potion to pay the duty @4% on the subject goods but had to mandatorily avail the benefit of Notification No. 29/2004-CE dated 09.07.2004 as amended.

(iv) The Original Adjudicating Authority vide Order-in-Original No. 170/R/2011-12 dated 25.01.2011 rejected the rebate claims on the grounds that the Respondent was not required to pay the duty in view of Notification No. 29/2004-CE dated 09.07.2004 as amended by Notification No. 58/2008-CE.

(v) Aggrieved the Respondent filed appeal with the Commissioner(Appeals) who vide Order-in-Appeal No. 84/2011(Ahd-III) KCG/Com(A)/Ahd dated 14.06.2011 rejected the appeal on the ground that the Respondent had no option to pay duty on exempted products in violation of Section 5A(1A) of the Central Excise Act, 1994 and also on the basis of the Circular No. 937/27/2010-CE dated 26.11.2010.

(vi) Aggrieved, the Respondent filed Revision Application with the Revisionary Authority. The Revisionary Authority vide GOI No. 1248/2013-CX dated 12.09.2013 set aside the impugned orders and remanded the case back to the original authority for denovo consideration of rebate claims and pass fresh orders in accordance with the law after taking into account the judgment of the Hon'ble Gujarat High Court Order dated 19.06.2013 in the case of M/s Arvind Ltd (SCA No. 10887/12 with SCA No. 10891/12).

(vii) In the remanded case, the Deputy Commissioner of Central Excise & Service Tax, Kalol Division, Ahmedabad-III vide Order-in-Original No. 4234/DC/2013-Reb dated 26.12.2013 sanctioned the rebate claim amounting to Rs. 62,97,181/

under Section 11B and interest of Rs. 14,68,643/- under Section 11BB of Central Excise Act, 1944.

(viii) Aggrieved, the Applicant filed appeal with the Commissioner (Appeals-I), Central Excise, Ahmedabad. The Commissioner(Appeals) vide Order-in-Appeal No. AHM-EXCUS-003-APP-121-14-15 dated 16.12.2014 held that it is no where mentioned or discussed about the reversal of the Cenvat credit taken by the Respondent before paying the duty and the only thing therefore, required to be examined is whether the Respondent has reversed the amount of Cenvat credit taken on the input used in the manufacture of the goods exported or otherwise. And allowed the appeal by way of remand to original authority for fresh adjudication taking into account the discrepancies discussed.

3. Being aggrieved, the Applicant/Department has filed this Revision Application under Section 35EE of the Central Excise Act, 1944 mainly on the following grounds that:

(i) The Commissioner(Appeals) had ignored the moot question of the Department's contents in the present case. In his arguments, the Commissioner(Appeals) has not considered the issue on its merits, however, he has relied upon the decision of Hon'ble Gujarat High court dated 19.06.2013 in the case of M/s Arvind Ltd arising out of SCA No.10887/12 and SCA No 10891/12 in which Hon'ble High Court of Gujarat has held that M/s Arvind Ltd has reversed the amount of Cenvat Credit taken on inputs used in the manufacturing of goods exported.

(ii) In another case of the Respondent , it was observed that M/s Bharat Vijay Mills had not reversed the Cenvat Credit Amounting to Rs 2,71,54,956/- and Rs 77,18,377/- availed in the same period i.e. from 07.12.2008 to 31.03.2009 and 01.4.2009 to 06.07.2009 respectively. For which the requisite action for recovery of Cenvat credit was taken by the issuing Show cause notices dated 01.12.2009 and 03.05.2010

to M/s Bharat Vijay Mills for recovery of CENVAT Credit amounting to Rs. 2,71,54,956/- and Rs. 77,18,377/- availed inadmissibly in contravention of the provision of the Notification No.29/2004-CE dated 09.07.2004 as amended vide Notification No. 58/2008-CE dated 07.12 2008 and availing undue benefit during the period from 07.12. 2008 to 31.03.2009 and 01.04.2009 06.07.2009. The adjudicating authority vide Order-in-Original No. 02-03/Commr/2011 dated 11.01.2011 disallowed Cenvat credit and ordered for recovery of the same along with interest under Rule 14 of the Cenvat Credit Rules, 2004. However, the Respondent being aggrieved had preferred appeal in the relevant time before the Cestat and the Hon'ble Cestat decided the matter in favour of the Respondent. The Department did not agree with the decision of the Hon'ble Cestat and therefore, filed an appeal in the Gujarat High Court.

(iii) Further, in the case of M/s Arvind Ltd, Cenvat credit availed by petitioner, was reversed by them as mentioned in the order of the Hon'ble High Court. However, in the instant case, the Respondent had not reversed the Cenvat credit availed by them. They had utilized the Cenvat credit for payment of duty on goods exported and therefore, it is clear that in the present case, M/s Bharat Vijay Mills had availed double benefit viz availing both the benefit of Cenvat Credit as well as rebate. Since the present case is different in its nature and gravity of the facts, the judgement of the High Court in the case of M/s Arvind Ltd can not be squarely applicable in the present case. This fact has been emphasized by the Commissioner(Appeals) in his Order-in-Appeal that the if the Respondent did not reverse the Cenvat credit taken on the inputs used in the goods exported, then the moot condition to rely on the case law of Arvind Limited remains unfulfilled.

(iv) Further, the Commissioner (Appeals) has held that in nowhere in the Order-in-Original it was mentioned or discussed about the reversal of the Cenvat Credit taken by them before paying the duty. However, the Commissioner (Appeal) 's above argument does not hold good. He has ignored the fact that the Deputy Commissioner, Kalol Division in his

Order-in-Original No.170/R/2011-12 dated 25.01.2011 at Para No 7 has discussed the issue that the Respondent had utilized the Cenvat credit for payment of duty on goods exported and it infers that they had not reversed the inadmissible Cenvat Credit availed by them. The Commissioner (Appeals) has ignored this fact and remanded for verification of the same. Therefore, the Commissioner (Appeals)'s Order does not hold good and is improper and unjustifiable.

(v) Further, the Board vide Circular No. 937/27/2010-CE dated 26.11.2010 has clarified regarding the simultaneous availment of Notification No. 58/2008-CE and 59/2008-CE both dated 07.12 2008. The excerpt of the same is reproduced below:

> *"2. The dispute was regard to whether an assessee can avail the benefit of either of the above said two notification whichever is beneficial to him or he is bound to avail the unconditional exemption under notification No. 20/2004-CE, as amended during the period under dispute in terms of the provisions of Section 5A(1) of the Central Excise Act, 1944.*
>
> *3. The matter was examined in the Board. As a substantial question of law was involved, the matter was referred to the Law Ministry for its opinion. The Ministry of Law has opined that the language used in said section 5A(1A) is unambiguous and principles of harmonious construction cannot he applied in the instant case in view of specific provision under sub-section (1A) of section 5A of the Central Excise Act. The Law Ministry has accordingly concluded that in view of the specific bar provided under sub-section (1A) of section 5A of the Central Excise Act, the manufacturer cannot opt to pay the duty under notification 59/2008-CE dated 7.12.2008 and he can not avail the Cenvat Credit of the duty paid on inputs.*
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> *4. The aforesaid opinion of Law Ministry has been accepted by the Board. Pending issues, may be decided accordingly.*

(vi) Further, the Commissioner (Appeals) vide Order-in-Appeal dated 17.12.2014 had remitted the matter back to the Original adjudicating authority to examine the matter as to whether the party has reversed the amount of Cenvat credit taken on inputs used in the manufacturing goods exported. He can alone examine the same by calling the respective documents from M/s Bharat Vijay Mills by

giving an opportunity to the party. He cannot remand the matter to the Adjudicating Authority in such manner.

(vii) Section 35(A) of the Central Excise Act, 1944/ Section 128A (3) of the Customs Act, 1962 as it stood before 11.05.2001 read as

> *"Commissioner (Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling decision or order appealed against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be after taking additional evidence, if necessary. "*

(viii) The above underlined phrase of the above referred Section was amended with effect from 11.05.2001 and the new section read as

> *"Commissioner(Appeals) shall after making such further enquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against".*

(ix) Further, the said amendment with effect from 11.05.2001 withdrew the powers of remand which was earlier vested with the Commissioner (Appeals). The said amendment was made in the Finance Act, 2001 by way of approval/assent given by the Parliament. Since then, the Commissioner (Appeals) has been authorized to act as an Adjudicating Authority and pass necessary orders if it is found that the original Adjudicating Authority has passed an order which is not legal and proper, by calling for the adjudication proceeding's record and re-examine the issue afresh/suo moto. The Commissioner (Appeals) has been given powers to issue orders after ascertaining the facts at his end while in the earlier he could order the original Adjudicating Authority to adjudicate the matter in question afresh by way of remand directions.

(x) The Hon'ble Supreme Court of India in its judgment dated 01.07.2007 in Civil Appeal No.6988/2005 in the case of M/s MIL India Ltd [2007 (210) ELI 188 (S.C.)] has noted the provisions of amended law by observing that

"in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that Clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (Appeals) to remand matter back to the adjudicating -authority for fresh consideration."

(xi) The Hon'ble High Court of Punjab & Haryana in the case of

(a) M/s Enkay India Rubber Co Pvt. Ltd. [2008 (224) ELT 393 (P&H)],

(b) M/s B.C. Kataria [2008 (221) ELT 508 (P & H)], and

(c) M/s Hawkins Cookers Ltd.

has stated that the observations made by the Hon'ble Supreme Court in the above referred order in Civil Appeal No 6988/2005 decided on 01.03.2007, are part of the ratio decided by the Apex Court in its judgment passed in case of M/s MIL India Ltd [2007 (210) ELT 188 (S.C.)].

(xii) All the above referred Orders passed by Hon'ble High Court of Punjab & Haryana have been passed in 2007 and 2008 i.e. after passing of order in case of M/s Medico Lab by the Hon'ble Gujarat High Court on 21.09.2004. Even the Hon'ble Supreme Court's judgment in the case of MIL India Ltd. dated 01.03.2007, has been passed after the order passed by Hon'ble Gujarat High Court. All these orders affirm the amendment made in the Finance Act, 2001 by the Parliament vide which remand back powers of the Commissioner (Appeal) have been done away with.

(xiii) While passing the present Order-In-Appeal by the Commissioner (Appeals), the ratio decided in the above discussed judgments, has been lost sight of and has overlooked the Board's Instruction No 275/34/2006-CX. 8A dated 18.02.2010 which was issued before passing of the said Order-in-Appeal. The Commissioner (Appeals) has failed to follow the judicial discipline since the said authority was bound to follow the judgments and Circular which prohibited

Commissioner (Appeals) to remand the case back to the original Adjudicating Authority.

(xiv) The referred Circular dated 18.02.2010 which has been overlooked by the Commissioner (Appeal), provided that the Commissioner (Appeals) should examine the matter/issue by calling for the adjudication proceedings record and pass appropriate order himself without remanding back the case to the Original Adjudicating Authority. The said order could have been the passed after ascertaining the facts of the case and the provisions of law involved in it.

(xv) The Commissioner (Appeals) had failed to adhere to the judicial discipline by directing the Original Adjudicating Authority to decide the matter afresh. Having failed to do so, the order so passed by the Commissioner (Appeal) is against the settled law and Circular and hence needs to be set aside. The Apex Court and other Hon'ble High Courts have held that the Commissioner (Appeals) has got no powers to remand the case back to the original Adjudicating Authority after the amendment made in the relevant section with effect from 11.05.2001. The case laws issued in the year 2007 and 2008 by the Apex Court and Hon'ble High Court of Punjab & Haryana, prevail over the Hon'ble High Court of Gujarat's order dated 21.09.2004.

(xvi) In view of the settled propositions of law, the Commissioner (Appeal) Order-in-Appeal under reference, is bad in law and deserves to be set aside as it directs the original Adjudicating Authority to re-examine the issue whether the party has reversed the amount of Cenvat Credit taken on inputs used in the manufacturing of goods exported. The same could have been done by the Commissioner (Appeals) by calling for documents from the said claimant to come to a fair and just conclusion by granting another opportunity to the said Respondent.

(xvii) The Commissioner (Appeals) has committed gross error of law by remanding back the matter on the above grounds. The same cannot be remanded back to the original Adjudicating Authority in such a manner.

(xx) The Applicant prayed that the

(a) To examine whether the Commissioner (Appeal)'s above order is legal, proper and justifiable;

(b) To order for recovery of the amount sanctioned by the Deputy Commissioner erroneously to the Respondent by wrongly judging the nature of the case;

(c) To set aside the impugned Order-In-Appeal dated 17.12.2014 of the Commissioner (Appeal) which is not legal and proper in as much as the Commissioner (Appeals) cannot remand a matter in such way without deciding the same himself.

4. Personal hearing was fixed on 03.03.2021, 10.03.2021, 06.04.2021, 13.04.2021, 16.07.2021 and 23.07.2021, however no one appeared for the hearing. Hence the case is taken up based on records on merits.

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

6. From perusal of records, Government observes that the Respondent are engaged in the manufacturer of cotton yarn, processed cotton fabrics, processed man made fibre falling under 52,53,55, & 58 of the schedule to Central Excise Tariff Act, 1985. Under Notification No. 29/2004-CE the specified rate of duty was 4% advalorem for 100% cotton fabrics. The Notification No. 29/2004-CE was amended by Notification No. 58/2008-CE dated 07.12.2008 wherein the effective rate of duty was changed to NIL for 100% cotton fabrics. Another Notification No. 59/2008-CE dated 07.12.2008 also specified rate of duty 4% for cotton fabrics. The Respondent cleared goods for export during the period from 11.12.2008 to 04.07.2009 under claim of rebate on payment of duty @ 4% under Notification No. 59/2008-CE even though there was unconditional exemption from duty under Notification No. 29/2004-CE as amended by Notification No. 58/2008-CE dated 7.12.2008 and filed 129 rebate claims total amounting to Rs. 62,97,781/-. The Respondent was issued 129 Show

Cause Notices on the grounds that as per Section 5A(1A) of the Central Excise Act, 1944 where an exemption from whole of the duty of Excise has been granted absolutely, the Respondent has no option to pay duty. Since 100% cotton fabrics were exempted from duty under Notification No. 29/2004-CE as amended, the Respondent was not required to pay duty. The Original Adjudicating Authority vide Order-in-Original No. 170/R/2011-12 dated 25.01.2011 rejected the rebate claims. Aggrieved the Respondent filed appeal with the Commissioner(Appeals) who vide Order-in-Appeal No. 84/2011(Ahd-III) KCG/Com(A)/Ahd dated 14.06.2011 rejected the appeal. Aggrieved, the Respondent filed Revision Application and the Revisionary Authority vide GOI No. 1248/2013-CX dated 12.09.2013 set aside the impugned orders and remanded the case back to the original authority for denova consideration after taking into account the judgment of the Hon'ble Gujarat High Court Order dated 19.06.2013 in the case of M/s Arvind Ltd (SCA No. 10887/12 with SCA No. 10891/12). In the denovo case, the Deputy Commissioner of Central Excise & Service Tax, Kalol Division, Ahmedabad-III vide Order-in-Original No. 4234/DC/2013-Reb dated 26.12.2013 sanctioned the 129 rebate claims amounting to Rs. 62,97,781/- under Section 11B and interest of Rs. 14,68,643/- under Section 11BB of Central Excise Act, 1944. Aggrieved, the Department filed appeal with the Commissioner (Appeals-I), who vide Order-in-Appeal No. AHM-EXCUS-003-APP-121-14-15 dated 16.12.2014 held that it is no where mentioned or discussed about the reversal of the Cenvat credit taken by the Respondent before paying the duty and the only thing therefore, required to be examined is whether the Respondent has reversed the amount of Cenvat credit taken on the input used in the manufacture of the goods exported or otherwise. And allowed the appeal by way of remand to original authority for fresh adjudication taking into account the discrepancies discussed. The Applicant/Department filed the current revision application.

7. Government notes 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 Government finds that Section 5A (1A) of CEA will be attracted only when there is Notification issued under Section 5A of Central Excise Act exempting excisable goods absolutely from whole of the duty leviable. The aforesaid is strengthened by the expression *"an exemption..... "* appearing in Section 5A(1A) of CEA. In the current case, Section 5A(1A) of CEA is not applicable as both the notifications i.e. Notification No. 58/2008-CE and Notification No. 59/2008-CE both dated 07.12.2008 are prescribing effective rate of duty/concessional rate of duty where one of the notification is granting full exemption absolutely and another specifying the rate of duty. The text of the notifications is reproduced here:

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 9th 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 dated 07.12.2008

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%*
6.	*5302, 5305, 5306, 5308 (excluding 5308 10 10 and 5308 10 90), 5309, 5310 and 5311*	*4%*
9.	*5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515 and 5516*	*4%*
13.	*5801 (excluding 5801 22 10 and 5801 35 00), 5802, 5803, 5804 (excluding 5804 30 00), 5806, 5808, 5809, 5810 and 5811.*	*4%*

Thus Notification No. 58/2008-CE and Notification No. 59/2008-CE are two independent notifications and therefore Respondent has correclty opted to clear goods under Notification No. 59/2008-CE and paid duty at the time of export and are thus entitled to rebate to the duty paid at the time of exporting the goods under Rule 18 of the CER.

8. Further, Government observes that the Respondent had paid the duty on the goods exported on their own by utilizing Cenvat credit availed on the inputs used in the manufacturer of said exported goods. Government notes

that Rule 11(3) of the Cenvat Credit Rules, 2004 was inserted vide Notification No. 10/2007-CE (NT) dated 01.03.2007.

> *"G.S.R. (E).□ In exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944) and section 94 of the Finance Act, 1994 (32 of 1994), the Central Government hereby makes the following rules further to amend the CENVAT Credit Rules, 2004, namely: -*
>
> *5. In rule 11 of the said rules, after sub-rule (2), the following sub-rules shall be inserted, namely: -*
>
> *"(3) 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 and is lying in stock or in process or is contained in the final product lying in stock, if, -*
>
> *(i) he opts for exemption from whole of the 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. "*

Government finds that Rule 11(3)(i) of Cenvat Credit Rules, 2004 applies only in a situation where the assessee has opted for exemption on the whole of duty under a notification issued under Section 5A of CEA. It is clearly not the case of the Respondent that exemption from duty was availed. In fact, the Respondent has chosen to pay duty at 4% under Notification No. 59/2008. Therefore, Rule 11(3)(i) of Cenvat Credit Rules, 2004 cannot be said to be applicable to the current case. Similar view has been taken by the Hon'ble High Court of Gujarat in the case of CCE Vs. Ingersoll Rand (India) Ltd. Tax Appeal No. 798 of 2006 wherein it was held that in absence of any statutory provision of reversal of Cenvat credit in case inputs are written off, Board cannot insist for such reversals.

9. The case of M/s Arvind Ltd. was decided by the Gujarat High Court on 29.06.2013. In this case, the Hon'ble High Court has held that

> *"**9.** ..... the question that involves in these petitions is the wrong availment of the benefit of concessional rate of duty vide Notification No. 59/2008, dated December 7, 2008. Admittedly, the final products were exempted from payment of duty by original Notification No. 29/2004-C.E., dated July 9, 2004 as further amended vide Notification No. 59/2008-C.E., dated December 7, 2008. The fact is not being disputed by the respondents that the petitioner availed Notification No. 59/2008 for clearance made to export and thereafter filed various rebate claims. It is, thus, an undisputed fact that the petitioner on final products discharged the duty liability by availing the benefit of Notification No. 59/2008 and as has already been noted in the record, it has reversed the amount of Cenvat credit taken by it on the inputs used for manufacturing of such products. Thus, when the petitioner is not liable to pay duty in light of the absolute exemption granted under Notification No. 29/2004 as amended by Notification No. 59/2008-C.E. read with the provision of Section 5A(1A) of the Act and when it has not got any other benefit in this case, other than the export promotion benefits granted under the appropriate provision of the Customs Act and Rules (which even otherwise he was entitled to without having made such payment of duty), we are of the firm opinion that all the authorities have committed serious error in denying the rebate claims filed by the petitioner under Section 11B of the Act read with Rule 18 of the Rules. The treatment to the entire issue, according to us, is more technical rather than in substance and that too is based on no rationale at all.*
>
> ***10.** We also cannot be oblivious of the fact that in various other cases, the other assessees have been given refund/rebate of the duty paid on inputs used in exported goods. The stand of the Revenue is also not sustainable that the payment of duty on final products exported at the will of the assessee cannot be compared with other type of cases of refund/rebate of duty. Admittedly, when the petitioner was given exemption from payment of whole of the duty and the petitioner if had paid duty at the time of exporting the goods, there is no reason why it should be denied the rebate claimed which otherwise the petitioner is found entitled to. We are not going into the larger issues initially argued before us as subsequently the Revenue has substantially admitted the claim of rebate of excise duty and has not resisted in substance such claim of rebate.*
>
> ***11.** Resultantly, both the petitions are allowed quashing and setting aside the orders impugned in both the petitions....."*

Thus the Hon'ble High Court of Gujarat has held that once the duty has been paid on exported goods, rebate cannot be denied on the ground that

the assesse ought to have claimed exemption on the goods in view of Section 5A(1A) of CEA.

10. In view of above position, Government set asides the impugned Order-in-Appeal No. AHM-EXCUS-003-APP-121-14-15 dated 16.12.2014 passed by the Commissioner (Appeals-I), Central Excise, Ahmedabad and upholds the order of Deputy Commissioner of Central Excise & Service Tax, Kalol Division, Ahmedabad-III passed vide Order-in-Original No. 4234/DC/2013-Reb dated 26.12.2013 as proper and legal.

11. The Revision Application filed by the Applicant/Department is disposed of on above terms

Shrawan 23/9/21

(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No.326/2021-CX (WZ) /ASRA/Mumbai Dated 23.09.2021

To,

The Commissioner of CGST,
Ahmedabad North,
Custom House, 1st floor
Navrangpura,
Ahmedabad – 380 009.

Copy to:

1. M/s Bharat Vijay Mills, Textile Division of M/s Sintex Industries ltd, Seven, Garnala, Kalol, Gandhinagar, Gujarat – 382 721.
2. PA to AS (RA), Mumbai
3. Guard file
4. Spare Copy.

ATTESTED

C B. NAIR
ASSISTANT COMMISSIONER
REVISION APPLICATION, MUMBAI