

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 198/201/12-RA/4614

Date of Issue:- 22/10/19

ORDER NO. 34 /2019-CX(SZ)/ASRA/MUMBAI DATED 19-9-2019 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 THE CENTRAL EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	198/201/12-RA	The Commissioner of Central Excise, Salem.	M/s Jayavarma Textiles Pvt. Ltd.

**Subject:** Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. SLM-CEX-APP-027-2012-ST dated 29.06.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Salem.

**ORDER**

This Revision application is filed by the Commissioner of Central Excise, Salem (hereinafter referred to as the 'applicant') against the Order-In-Appeal No. SLM-CEX-APP-027-2012-ST dated 29.06.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Salem.

2. M/s Jayvarma Textiles Pvt. Ltd., Unit II, Erode District (hereinafter referred to as 'the respondent') are manufacturer of Cotton Yarn falling under Chapter 52 and are availing Notification No. 29/2004-CE dated 09.07.2004 and export the goods on payment of duty and claim rebate of duty paid on the exported goods. They had filed seven claims on the duty paid on exported goods and the Rebate Sanctioning Authority had sanctioned the rebate claims and granted the same to be taken as credit in their Cenvat Account.

3. Aggrieved by these orders, the respondent filed an appeal before the Commissioner of Central Excise (Appeals), Salem. The Commissioner of Central Excise (Appeals) vide Order in Appeal No. SLM-CEX-APP-027-2012-ST dated 29.06.2012 ordered that the rebate amount are to be granted in cash following the Board's instructions contained in Circular No. 687/3/2003-CX dated 03.01.2003 wherein it was clarified that the duty paid through the actual credit or deemed credit account on the goods exported must be refunded in cash.

4. Aggrieved by the said order in appeal, the applicant filed the instant Revision Application on the following grounds :-

4.1 The Order in Appeal No. 27/2012 dated 29.06.2012 merits acceptance except the fact that in respect of all the cases, the value declared in the ARE-1 is more than the FOB value and as such, the rebate has to be sanctioned in cash equivalent to the FOB value and the balance rebate amount

is to be granted in the manner in which it was paid at the time of clearance of export.

4.2 The details of Excess duty paid in cash are as follows :-

OIO NO. / Date	ARE-1 No. & Date	ARE-1 Value	FOB Value	Amount of rebate claimed	Excess Rebate paid
04/20.02.2012	01/2011-12 dt. 08.06.2011	3732693	3660000	182819	3744
05/20.02.2012	07/2011-12 dt. 07.07.2011	3935679	3860810	202688	3855
06/20.02.2012	08/2011-12 dt. 17.07.2011	3935679	3860810	202688	3856
07/20.02.2012	05/2011-12 dt. 30.03.2011	4023060	3951245	207188	3699
08/20.02.2012	03/2011-12 dt. 17.06.2011	3732693	3704000	182819	1478
09/20.02.2012	06/2011-12 dt. 06.07.2011	4023060	3947997	207188	3866
10/20.02.2012	09/2011-12 dt. 17.07.2011	3935679	3860810	202688	3856
			TOTAL		24354

4.3 The respondent paid the duty at appropriate percentage but the value adopted for duty payment in there ARE-1 is more than the FOB value. They ought to have paid duty on the FOB value instead of higher value which was admittedly not payable.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply.

6. The respondent vide reply dated 05.06.2015 has submitted that :-

6.1 The Revenue's objection is that, when the FOB value is lesser than ARE-1 value, rebate shall not be sanctioned in cash for the duty paid on such difference.

6.2 The appeal is for an amount of Rs. 24,354/-.

6.3 They have supplied the copies of the order in originals consequent to the OIA No. 27/2012 dated 01.10.2012. From said order in originals, it is evident that the excess amount was not sanctioned in cash in respect of OIO 37,38,39,42 & 43 all dated 01.10.2012. In respect of OIOs 35 & 36 dated 01.10.2012, the FOB value is more than ARE-1 value; therefore the dispute will not arise at all.

6.4 The disputed amount is also less than monetary limit fixed by the CBEC, New Delhi for filing appeals before various forums.

7. A Personal Hearing was held in matter on 19.05.2015, 08.06.2015, 23.06.2015, 14.07.2015 and 20.08.2019. However, neither the applicant nor the respondent attended the same. The applicant vide their letter dated 19.09.2019 submitted that the grounds of revision application filed by the department are tenable and requested to issue appropriate order on the facts and merit.

8. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

9. The Government observes that prima facie the issue involved in the instant revision application is the manner of payment of rebate amount ordered by the Commissioner (Appeals) in impugned Order in Appeal.

10. The Govt. observes that in the instant case the Commissioner (Appeal) vide impugned Order in Appeal granted the payment of rebate amount in cash. The Department has pleaded that the payment of rebate in cash be restricted to FOB value only.

11. In this regard, Government finds that it has been stipulated in the notification No. 19/2004- CE (NT) dated 06.09.2004 and the CBEC Circular No. 510/06/2000-CX dated 03.02.2000 that rebate of whole of duty paid on all excisable goods will be granted. Here, the whole of duty of excise would mean

the duty payable under the provisions of Central Excise Act. However, in case any amount paid in excess of duty liability on one's own volition cannot be treated as duty. But it has to be treated simply a voluntary deposit with the Government which is required to be returned to the respondent in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.09.2008 in CWP Nos. 2235 & 3358 of 2007, in case of M/s Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009(235)ELT-22(P&H) has decided as under :-

*"Rebate/refund- Mode of payment- petitioner paid lesser duty on domestic product and higher duty on export product which was not payable- Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."*

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/ amount in Cenvat Credit is appropriate. As such, the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.

12. In view of discussion in the foregoing paras, the Government opines that the rebate amount in cash the in the instant case should be restricted to the extent equivalent to the value to be arrived at by subtracting post clearance expenses from FOB Value. The Government, therefore, finds that the Commissioner (Appeals) has erred in granting the entire rebate amount in cash and the order in appeal No. 27/2012-ST dated 29.06.2012 passed by the Commissioner of Central Excise (Appeals), Salem is liable to be set aside.

13. On going through the submissions by respondent, Government notes that the rebate sanctioning authority has re-examined the subject rebate

claims in the light of Commissioner (Appeals) order No. 27/ 2012 dated 29.06.2012. The respondent have submitted the copies of OIO Nos. 35,36,37,38,39,42 and 43 all dated 01.10.2010 passed by the rebate sanctioning authority sanctioning the impugned rebate claims in the light of orders of Commissioner (Appeals). On perusal of the said OIOs, Government observes that the excess amount was not sanctioned in cash wherever applicable but the respondent has been allowed to take re-credit of the same. The Government therefore opines that the issue stands settled and no further action is warranted in the instant revision application.

14. The Revision Application, being infructuous, is disposed off.

15. So, ordered.

(SEEMA ARORA) 19/9/19  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

To

M/s Jayvarma Textiles Pvt. Ltd.,  
Unit-II, Kurichipudur,  
Perundurai, Erode District,  
Tamilnadu.

Copy to :

1. The Commissioner of CGST, No.1, Foulks Compound, Anai Medu Road, Salem - 636 001 (Tamilnadu).
2. The Assistant Commissioner of GST & Central Excise, Erode-I Division, No. 81, Bharathi Nagar, Erode- 638 004.
3. Shri S. Durairaj, Advocate, 176/84, West Sambandam Road, R.S. Puram, Coimbatore- 641 002. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.