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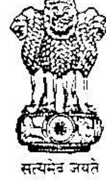

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

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. 195/65/2013-RA,
195/858-866/2010-RA, /8161
195/784/12-RA   Date of Issue: 04.12.2023

ORDER NO. 390-400/2023-CX (WZ)/ASRA/MUMBAI DATED 30.11.23 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : - Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Orders-in-Appeal.

Applicant : M/s. SVG Fashions Ltd.

Respondent: Pr. Commissioner of CGST & CX, Vapi

ORDER

The Revision application is filed by M/s. SVG Fashions Ltd. (hereinafter referred to as 'applicant') against the following Orders-in-Appeal.

Sr. No.	RA	Order in Appeal
1	195/65/2013-RA	SRP/157/DMN/2012-13 dated 08.11.2012
2	195/858-866/2010-RA	SKSS/110-118/DMN/NDMN/2010-11 dated 30.09.2010
3	195/784/12-RA	CS/42/DMN/SDMN/2012-13 dated 29.05.2012

2. The facts of the cases in brief are that the applicant is manufacturing embroidery fabrics. They availed full exemption from whole of duty of excise in respect of clearances for home consumption under Notification No. 30/2004-CE dated 09.07.2004. However, in respect of exports, they paid duty on the export goods as per Notifications No. 29/2004-CE dated 09.07.2004 from the accumulated Cenvat Credit balance and claimed rebate of duty paid from Cenvat Credit Account. The claims were rejected by the Adjudicating Authority on the ground that since full exemption was available to the finished goods, the applicant could not pay duty on the export goods and hence there is no question of rebate. Aggrieved, the applicant filed the appeal before the Appellate Authority, who vide impugned OIAs rejected the Appeals filed by the Applicant and upheld the OIOs. Appellate Authority observed that the Applicant has not maintained separate books of account. These cases have been kept pending in callbook on account of civil writ petition No. 9070 of 2010 filed by department in Punjab & Haryana High court against Nahar Industrial Enterprises Ltd. Now that the said writ petition has been dismissed by the High Court vide order dated 11.04.2023, current revision applications have been taken up for disposal.

2. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:

i. the Commissioner (Appeals), Daman has seriously erred while passing the impugned order and not maintainable.

ii. It is wrongly held by Asst. Commissioner of Central Excise, Division- South Daman that the clearance has to be treated as clearance of exempted goods under Not No.30/2004-CE dtd 09.07.2004. It is submitted that under no

circumstances, the clearances can be treated as clearances of exempted goods under Not No. 30/2004-CE dtd 09.07.2004 once the credit is availed on any of the inputs.

iii. It is an admitted position in the SCN as well as in OIO that the Applicants availed the credit on inputs namely packing materials. Therefore, the exemption Not No. 30/2004-CE has no applicability.

iv. The Commissioner (Appeals), Daman seriously erred in treating the dutiable clearances as clearances of the exempted goods under Not No. 30/2004-CE dtd 09.07.2004

v. The impugned order passed by the Commissioner(A), Daman is in contravention of disputed issue already settled by revisionary authority in the matter of Inter-Globe services, 2011 (272) ELT 476 (GOI) (Ex-I) where under the revisionary authority allowed the rebate on export of processed fabrics made by availing credit only on dyes and chemicals and not on the main inputs namely fabrics. The revisionary authority dismissed the similar allegation of the department that the clearances has to be treated as exempted clearances under Not No.30/2004-CE dtd 09.07.2004 and allowed the rebate of duty paid under Not No.29/2004-CE dtd 09.07.2004.

vi. the impugned order passed by the Commissioner(A), Daman is also contrary to the relied upon pronouncements of revisionary authority in case of Auto Spinning Mills 2012 (276) ELT 134 (GOI) (Ex-J) where under the revisionary authority allowed the rebate claim of duty paid under the Not No.29/2004-CE Dtd.09.07.2004 even without taking credit on inputs by holding that no condition is attached under Not No.29/2004-CE Dtd.09.07.2004 to pay the duty. It is submitted that Commissioner(A), Daman even did not bother to discuss the said relied upon pronouncements and passed the impugned order without adducing any findings thereof.

vii. the impugned order passed by the AC Central Excise is based on various observation having no relevance with the subject matter.

viii. the findings of the Commissioner (Appeals), Daman in para 5.2 is flimsy and shocking As per the said findings, the applicant's payment of duty under Not No. 29/2004-CE dtd 09.07.2004 is not legal as Applicants have taken full credit on inputs instead of taking proportionate credit. It is submitted that the payment of duty and the availment of credit has no relevance. In Applicant's case, they availed the credit on packing materials used for export

only and did no avail any credit on packing materials used for local exempted clearances. Accordingly, they correctly availed the credit and correctly paid the duty on export clearances and the Commissioner(A), Daman has mischievously and intentionally confirmed the OIO by adducing baseless and irrelevant observations.

ix. It is submitted that the reliance placed by the Commissioner (Appeals), Daman on CBEC Circular No. 845/03/2006-Cx dtd.01.02.2007 has no relevance whatsoever. The said circular is with regards to claiming of exemption under Not No. 30/2004-CE dtd.09.07.2004. In Applicants case, the disputed issue is not regarding availment of exemption of Not No. 30/2004-CE dtd, 09.07.2004. Therefore, the impugned order passed by the Commissioner (Appeals), Daman is not legal and proper.

x. It is further submitted that the rejection of rebate claims is also contrary to the various rebate claims already sanctioned by the department.

xi. Without prejudice to aforesaid it is submitted that the Commissioner (Appeals), Daman erred in confirming the penalty under Rule 27 of Central Excise Rules 2002. There is no involvement of any contravention of provisions and therefore penalty imposed is patently illegal.

xii. In view of the above, the applicant requested to set aside the impugned Order-in-Appeal and to allow the rebate.

3. Personal hearing in this case was fixed for 14.07.2023, Mr. Manoj Mahapadi, Sr. Export Executive appeared for Applicant and submitted that goods were exported using Notification 29& 30, one for domestic clearances with Nil duty and one for export with payment of duty vailing cenvat. He mentioned that separate accounts were maintained for inputs of both types of clearances.

4. Government has carefully gone through the relevant case records, written submissions and perused the impugned letters, Order in Original and Order-in-appeal.

5. Government observes that the issue to be decided in the present case is as to whether rebate claimed by the applicant are admissible under rule 18 of Central Excise Rules,2002 in light of Notification No. 29/2004-C.E. and 30/2004-C.E. both dated 09.07.2004 or otherwise.

6. Government notes that issues involved in all the current revision applications are identical and therefore, are being clubbed and taken up together.

7.1 Government observes that the applicant, involved in manufacturing embroidery fabrics under Chapter 58 of the Central Excise Tariff Act, was registered with Central Excise authorities. Notification No. 29/2004-C.E., dated 9-7-2004, provided effective excise duty rates for Textile and Textile Articles falling under Chapter 50 to Chapter 63 without specific conditions for exemption. However, Notification No. 30/2004-C.E., dated 9-7-2004, granted full exemption for the same categories but required the applicant to refrain from claiming Cenvat Credit on duty paid for inputs or capital goods under the Cenvat Credit Rules, 2002.

7.2 Government notes that 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 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 and were not required to pay duty in first place. 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 Notification No.30/2004-CE and cannot pay duty under Notification No.29/2004- CE.

7.3 The Hon'ble Gujarat High Court had in the case of Arvind Ltd. vs. UOI [2014(300)ELT 481(Guj.)] dealt with the issue of simultaneous availment of two different notifications and observes as under :

> *" 9. On, thus, having heard both the sides and on examination of the material on record, 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 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."

7.4 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.

7.5 Further, Government observes that this issue stands decided in case of M/s. Super spinning Mills Ltd wherein Hon'ble Madras High Court vide their judgment order 2020 (373) E.L.T. 594 (Mad.) dated 07.02.2020 has observed that benefits of one of two notifications cannot be forced on petitioner merely because revenue would stand to gain by denying rebate of Central Excise duty paid. The relevant portion of the judgment is reproduced as under:

> " ***14.*** *Both the notifications namely Notification No. 29/2004-C.E., dated 9-7-2004 and Notification No. 30/2004-C.E., dated 9-7-2004 prescribes the rate of tax to be paid on the exported organic cotton yarn.*
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> ***15.*** *Under Notification No. 29/2004-C.E., dated 9-7-2004 a manufacturer is required to pay tax at 4%. Whereas, under Notification No. 30/2004-C.E., dated 9-7-2004, a manufacturer could clear the goods without payment of duty provided condition there are more satisfied. As per the proviso to the said notification the notification does not apply to goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the Cenvat Credit Rules, 2002.*
>
> ***16.*** *The petitioner has opted to pay Excise duty in terms of the Notification No. 29/2004-C.E., dated 9-7-2004. Therefore, it cannot be said that the organic cotton yarn exported by the petitioner was not liable to Excise duty so as to deny the benefit of rebate claim under Rule 18 of the Central Excise Rules, 2002.*
>
> ***17.*** *Notification No. 30/2004 is a conditional notification which allows the manufacturer to clear the goods at nil duty provided no credit is availed on inputs of capital goods under the provisions of the Cenvat Credit Rules, 2002.*
>
> ***18.*** *As per sub-clause (1A) to Section 5A of the Central Excise Act, 1944 in case of excisable goods which is fully exempt from payment of excise duty the manufacturer cannot be [levied] Excise duty. However, in the facts of the case it is noticed that organic cotton yarn is exempt under Notification No. 30/2004-C.E., dated 9-7-2004 under a conditional notification which the petitioner has not fulfilled.*
>
> ***19.*** *It is the choice of the manufacturer whether to opt for the benefit of one of the notifications. It cannot be forced on the petitioner merely because the revenue would stand to gain by denying rebate of central excise duty paid on*

the exported organic cotton yarn under Rule 18 of the Central Excise Rules, 2002."

8. 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 and 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.

9. In the present case, Applicant has claimed during the personal hearing that separate accounts were maintained by them for inputs of both types of clearances. While, Appellate Authority has recorded in their order that they have not maintained the same. Government notes that 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. Government observes 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. Therefore, it is pertinent to note that maintenance of separate account for exempted and non-exempted goods is necessary to ensure that both cenvat credit and rebate have not been taken simultaneously.

10. Furthermore, in the Appellate Authority's orders, it was observed that the applicant sought to encash the accumulated Cenvat Credit through the rebate route. The rebate applications reveal that the majority of the duty was settled from the Cenvat Credit Account, with a minimal amount from the PLA. The applicant discharged duty on the exported goods using accumulated Cenvat Credit, which they could not utilize for duty payment. In this context, Government notes that the applicant failed to substantiate their rebate claims by providing evidence that the exported goods were manufactured using the goods for which Cenvat credit had been availed. It is also observed that the determination of the admissibility of Cenvat credit used for duty payment has not been conclusively established in the orders of the original authority or the Commissioner (Appeals). Therefore, Government emphasises the importance of verifying the admissibility of the credit used for duty payment on exported goods when claiming a rebate. This verification is crucial, particularly in conjunction with the maintenance of separate accounts.

11. In view of above discussions, the Government sets aside the impugned Orders-in-Appeal and remands the cases back to original authority to examine the rebate claims to ascertain that the applicant had complied with the stipulation of maintaining a separate set of accounts, and credit used for payment of duty on export of goods for claiming rebate was eligible and admissible cenvat credit, and decide the claims accordingly.

12. Revision application is/are disposed off on the above terms.

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

ORDER No. 390-400/2023-CX (WZ) /ASRA/Mumbai Dated 30.11.23

To,

1. M/s. SVG Fashions Ltd., 719/2, Somnath Road, Somnath,Daman-396210.
2. The Pr. Commissioner of C.Ex. & Customs, 3rd Floor, Adarshdham Building, Vapi-Daman Road, Vapi-396191.

Copy to:

1. The Commissioner of Central Excise, Customs & Service Tax, (Appeals),Daman, 5th floor, Adarshdham Building, Vapi Daman Road, Vapi-396191.
2. Adv. D.H. Mehta, Shop No. 4, Vivek Enclave, Mandapeshwar Road, Shivaji Nagar, Borivali(W), Mumbai-400103.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file