

SPEED POST



F.No. 195/105/2018-R.A., 195/153-160/2018-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.. 10/3/21.....

Order No. 42-50/2021-CX dated 10-03-2021 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 Orders-in-Appeal Nos. CHD-EXCUS-001-APP-508-524-17-18 dated 28.02.2018 and CHD-EXCUS-001-APP-832-839-17-18 dated 28.03.2018 passed by the Commissioner (Appeals), CGST, Chandigarh

Applicants : M/s Vardhman Polytex Ltd., Solan

Respondent : Commissioner of CGST, Shimla.

ORDER

Nine revision applications nos. 195/105/2018-RA dated 28.05.2018 and 195/153-160/2018-R.A. dated 28.06.2018 have been filed by M/s Vardhman Polytex Ltd., Solan (hereinafter referred to as the applicant) against Orders-in-Appeal nos. CHD-EXCUS-001-APP-508-524-17-18 dated 28.02.2018 and CHD-EXCUS-001-APP-832-839-17-18 dated 28.03.2018 passed by the Commissioner (Appeals), CGST, Chandigarh wherein the appeals filed by the applicant against Orders-in-Original Nos. 1148-1164/AC/R/Baddi/2017 dated 13/11/2017 and 184/AC/R/Baddi/2016 dated 12.05.2016 have been rejected.

2. Brief facts of the case are that the applicant is engaged in the manufacture of 100% Cotton CBD Hosiery and Grey Yarn under Chapter 52 and 55 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 scheme is to neutralize the duty element suffered on inputs and input services.

4. Personal hearing was held on 10.03.2021 in virtual mode. Sh. Rupender Singh, Advocate, appeared for the applicants and he adopted the arguments put forth by him in earlier case which has

culminated in the government's Order No. 05-17/2021-CX dated 28.01.2021. Sh. Rupender Singh specifically highlighted that:

(i) The present matter relates to rebate. A restriction imposed in respect of Drawback cannot be used to deny rebate.

(ii) Hon'ble Rajasthan High Court's decision in Iscon Surgicals' case is a Double Bench order and should be followed.

No one attended the hearing for the respondents and no request for adjournment has also 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. The issue involved in all these cases is identical, i.e., whether the rebate of Central Excise duty paid in respect of exported goods would be admissible when the applicant exporter had already availed composite (or higher) rate of drawback in respect of the same goods. Instant revision applications seek setting aside of the impugned Orders-in-Appeal and payment of rebate in cash.

5.2 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."

5.3. 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, admittedly, there is no stay on these judgments by any higher judicial authority.

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, in the cases mentioned in Para 4 above, as well as in Order No. 18-27/2021-CX dated 08.02.2021.

5.5. It has been contended that the Government's Order No. 588-609/2018-CX dated 12.11.2018 in the revision application filed by their parent company, M/s Vardhman Textiles Ltd was challenged before Hon'ble Himachal Pradesh High Court, vide CWP No. 1042 of 2019, and the Hon'ble High Court has granted status quo vide interim order dated 15.05.2019 in respect of rebate/refund earlier allowed. The Government has perused the interim order dated 15.05.2019 and observes that the Hon'ble High Court has ordered as follows:

"Post the matter for hearing on 18th July, 2019. Meanwhile, status quo re: refund of the amount be maintained, subject to the petitioner's furnishing adequate security to the satisfaction of respondent no. 2"

Thus, the Hon'ble Court has only allowed the status quo to be maintained subject to the petitioner furnishing security to the

satisfaction of the department. There is no stay on the order dated 12/11/2018 passed by the Government.

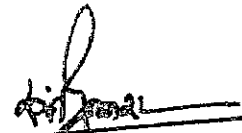
5.6. The applicant has relied heavily on the Hon'ble Rajasthan High Court's judgment in the case of M/s Iscon Surgicals Ltd. Vs UOI [2016(334) ELT 108 (Raj.)) to support their case. Hon'ble Rajasthan High Court has decided this matter in the light of the Apex Court's decision in the case of M/s Spentax 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 and not one kind of rebate only i.e., the exporter is entitled to claim rebate of duty paid on the excisable goods as well as the rebate of duty paid on materials used in manufacture or processing of such excisable goods. 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 same final goods, under the Drawback Rules, which was not the issue before the Apex Court in Spentax Industries. In its brief order in the case of Iscon Surgicals (supra), the Hon'ble Rajasthan High Court has not indicated the reason for following the ratio of Spentax Industries in respect of the issue in hand. On the other hand, in the case of M/s Raghav Industries (supra), the Hon'ble Madras High Court has clearly distinguished the judgment of Apex Court in the case of Spentax Industries (supra) on the grounds that the case before the Hon'ble Supreme Court was regarding "benefits of rebate on the inputs on one hand as well as on the finished goods exported on the other hand" under Rule 18 *ibid* whereas in the case on hand, the benefit is claimed under two different statutes, i.e., Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and the Central Excise Rules, 2002. It is contended on behalf of the applicant that the judgment in Raghav Industries is *per-incurium*, since it records that the Drawback Rules are made under section 75 of the Customs Act whereas these are also made under section 37 of the Central Excise Act. However, the Government observes that this contention is based

on a limited and narrow reading of the judgment in as much as, on a plain reading, the correct purport of the Hon'ble High Court's observations is that the issue involved in Spentax Industries was related to simultaneous availment of rebate on export product as well as inputs under Rule 18 of the Central Excise Rules, 2002, i.e., one statute whereas the present case is regarding availment of rebate on export product under Rule 18 of the Central Excise Rules, 2002 and the simultaneous availment of composite rate of drawback under the Drawback Rules, i.e., the dispute involves two different statutes, namely, the Central Excise Rules and the Drawback Rules.

5.7 It has been specifically highlighted that the present case relates to rebate to contend that a restriction imposed in respect of drawback cannot be used to deny rebate. The Government observes that in Raghav Industries (supra), the Hon'ble Madras High Court has noted the restrictions imposed by virtue of provisions of Rule 3 of the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, while deciding the issue in hand. Hence, this contention of the applicant is also covered by the decision in Raghav Industries.

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. Accordingly, the revision applications are rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

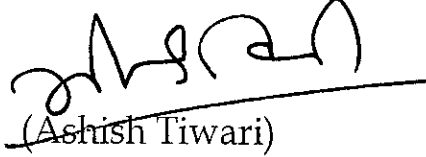
M/s Vardhman Polytex Ltd.,
Nangal Nihla/Uperla,
Swarghat Road, Nalagarh, Distt. Solan(HP).

G.O.I. Order No. 42-50/21-CX dated 10-3-2021

Copy to: -

1. The Commissioner of Central Goods & Service Tax, Shimla, Ground & 1st Floor, Commercial Parking Complex, Chotta Shimla-171002.
2. Commissioner (Appeals), CR Building, Plot No. 19-A, Sector 17-C, Chandigarh-160017
3. Sh. Rupender Singh, Advocate, M/s BSM Legal, Advocates & Solicitors, Q-6, Hauz Khas Enclave, New Delhi-16.
4. P.S. to A.S. (Revision Application).
5. Guard File.
- ✓ 6. Spare Copy.

ATTESTED



(Ashish Tiwari)

ASSISTANT COMMISSIONER (R.A.)