

195/301-349/15-RA
195/334-338/17-RA

REGISTERED
SPEED POST



F.No.195/301-349/15-RA
F.No.195/334-338/17-RA
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..17/7/18

ORDER NO. 39492/18CX dated 13-7-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P. Sharma, Additional Secretary to the Government of
India under section 35EE of Central Excise Act, 1944.

SUBJECT : Revision Application filed under Section 35EE of
Central Excise Act, 1944, against the Order-in-Appeal
No. JAL-EXCUS-000-APP-109-157-15-16 dated
15.07.2015, passed by the Commissioner of Central
Excise (Appeals), Chandigarh, and LUD-EXCUS-001-
APP-92-96-17-18 dated 20.09.2017, passed by the
Commissioner of Central Excise (Appeals), Ludhiana,
Punjab.

APPLICANT : M/s. Anshupati Textiles

RESPONDENT : The Commissioner of Central Excise, Ludhiana

ORDER

Revision Applications Nos. 195/301-349/15-RA and 195/334-338/17-RA have been filed by M/s Anshupati Textiles, Ludhiana, (hereinafter referred to as the applicant) against Orders-in-Appeal No. JAL-EXCUS-000-APP-109-157-15-16 dated 15.07.2015 and LUD-EXCUS-001-APP-92-96-17-18 dated 20.09.2017, passed by the Commissioner of Central Excise (Appeals), Chandigarh and Ludhiana, whereby the orders of the original adjudicating authority rejecting the rebate claims of the applicant have been upheld.

2. Brief facts leading to the filing of the Revision Applications are that the applicant had filed rebate claims amounting to Rs.1,48,34,075/- and Rs. 20,20,929/- which were rejected by the original adjudicating authority for the reason that the applicant had already claimed composite duty drawback of Customs, Central Excise and Service Tax component as mentioned in Column-A of the Drawback Schedule and, therefore, they could not avail rebate of duty under Notification No. 19/2004-Ce(N.T.) dated 06.09.2004 simultaneously in respect of the same exports of goods. The applicant's appeals filed before the Commissioner (Appeals) against the Order-in-Originals were also rejected vide aforementioned Orders-in-Appeal and the present revision application have been filed mainly on the ground that drawback of duty in respect of the inputs used in the manufacturing of exported goods and rebate of duty against the Central Excise duty paid on the finished exported goods are two separate incentives granted by the Government and their availment cannot be termed as double benefit as held by the lower authorities.

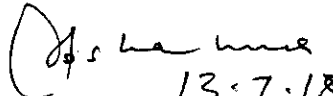
3. Personal hearing was held on 02.05.2018 and Sh. Rupender Sinhmar, advocate, appeared for personal hearing on behalf of the applicant who reiterated the grounds of revision already stated in their revision applications. He also placed reliance on the Supreme Court's decision in the case of Spentex Industries Ltd. Vs Union of India 2015(324)ELT686(SC) to emphasise that different benefits given under different schemes can be availed simultaneously.

As regard Madras High Court's decision in the case of Raghav Industries Ltd. 2016 (334) ELT 584 (Mad), relied upon by the Commissioner (Appeals) in his orders, he pleaded that the decision is per incurium as the Hon'ble Court has completely overlooked the relevant provisions of Rule 18 of Central Excise Rules, Notification No. 19/2004CE(NT) and Drawback Rules 1995 while concluding that petitioner cannot avail double benefit of rebate of duty and drawback of duty at the same time.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) have already considered the issue involved in the present revision application in details in their orders and rejected all the rebate claims for the reasons that the applicant had availed cenvat credit in respect of inputs as well as drawback of duty in violation of conditions no.6, 9(a) and 15(i) of Notification 92/2012-Cus(NT) dated 04.10.2012, Rule 3 & 12(ii) of Drawback Rules, 1995 and allowing rebate of duty in addition to drawback of duty will amount to double benefit which is not permissible under the law. Heavy reliance is also placed on decisions in the case of Suraj Filament Pvt. Ltd {2012(282)E.L.T.149(G.O.I.)} and Raghav Industries Ltd. Vs Union of India {2015(334)E.L.T.584 (Mad.)} for rejecting the appeals of the applicant for the above reasons. The Government also finds that the issue whether drawback of duty in respect of Customs, Central Excise and Service Tax and rebate of duty on the exported goods can be availed simultaneously has already been examined by the Hon'ble Madras High court of Madras in the case of Raghav Industries Ltd., Supra, and it has been clearly held that availment of drawback of duty as well as rebate of duty on the exported goods amount to double benefit and can not be availed simultaneously in the light of Rule 3 of Drawback Rules. Further it is also held that the apex court's judgement in the case of M/s Spantex Industries Ltd vs Union of India {2015(324)E.L.T.686(S.C.)} is not applicable because the issue involved in these cases are totally different. The applicant has not denied the validity of the above decision of the Madras High Court and did not produce any evidence to show that it was ever challenged by the Raghav Industries before

the Division Bench of Madras High Court and the applicant has also not cited any other decision of any other High Court or the Supreme Court contrary to the above mentioned decision of the Madras High Court. Instead the decision in Raghav Industries Ltd has been followed by Madras High Court subsequently in other case of Kadri Mills(CBE)Ltd. Vs Union of India {2016(334)E.L.T.642(Mad.)}. The applicant has only argued that the Madras High Court's decision is per incurium as the Hon'ble High Court has completely overlooked the provisions of Rule 18 of the Central Excise Rule, 2002, Notification No. 19/2004-Ce (N.T.) and Drawback Rules, 1995 while concluding that petitioner could not avail rebate of duty and double benefit of duty of drawback at same time. However, the Government does not agree with this argument as the Hon'ble High court has decided the matter in the case of Raghav Industries Ltd. after examining Rule 18 of Central Excise Rule, 2002, Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules, 1995, Notification No. 68/2011-Cus(N.T.) etc. and, therefore, Government can not term the said order as per incurium and saying so would amount to legal impropriety. Hence, considering the above two decisions of the High Court, Government does not find any fault in the orders of Commissioner (Appeals).

5. Accordingly, the Revision Applications are rejected.


13.7.18

(R. P. Sharma)

Additional Secretary to the Government of India

M/s. Anshupati Textiles,
341, K-1, Mundian Khurd, P.O. Sahbana,
Chandigarh Road,
Ludhiana.

ORDER NO. ^{439-492/18-LA} CX dated ¹³⁻⁷ 2018

Copy to:-

1. The Commissioner of Central Excise, Ludhiana, Central Excise House F-Block, Rishi Nagar, Ludhiana 1410001
2. The Commissioner of Central Excise (Appeals), Chandigarh – II, C.R. Building, Plot No. 19, Sector – 17C, Chandigarh – 160 017.
3. The Assistant Commissioner of Central Excise, B-XXX-154, Majestic Tower, Kailash Nagar, Sherpur, Ludhiana.
4. Mr. Rupinder Singh, Advocate, C-5/8, Safdarjung Development Area, Opp.IIT Gate, New Delhi-110016.
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED

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(Debjit Banerjee)

Sr. Technical Officer(R.A. Unit)