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GOVERNMENT OF INDIA
MINISTRY OF FINANACE
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. 195/151/SZ/2015-RA/3872 Date of Issue: 10.8.2020

ORDER NO. 487/2020-CX (SZ) /ASRA/MUMBAI DATED 03.06. 2020 OF THE 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 CENTRAL EXCISE ACT,1944.

Applicant : M/s Madura Coats Private Limited,
Papavinasam Mills Post,
Ambasamudram (Tamilnadu)- 627 422.

Respondent : The Commissioner of CGST & Central Excise, Madurai.

Subject : Revision Applications filed, under Section 35EE of Central Excise Act, 1944 against the Order-in-Appeal No. MAD-CEX-000-APP-027-031/15 dated 15.04.2015 passed by the Commissioner of GST & Central Excise (Appeals-I), Coimbatore.

: ORDER :

This revision application has been filed by the M/s Madura Coats Private Limited, Tamilnadu (hereinafter referred to as "the applicant") against the Order-in-Appeal No. MAD-CEX-000-APP-027 -031/2015 dated 15.04.2015 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore.

2. The case in brief is that the applicant are engaged in manufacturing of cotton yarns & Sewing Threads falling under Chapter No. 52, 54 & 55 of the Central Excise Tariff Act, 1985 and clearing the same for home consumption as well as for export. The applicants are availing full exemption under Notification No. 30/2004-CE dated 09.07.2004 for their home clearances and are availing Notification No.29/2004-CE dated 09.07.2004 as amended by Notification No. 7/2012-CE dated 17.03.2012 for payment of duty under concessional rate on their export goods under claim of rebate. The applicant have filed rebate claim claiming rebate of duty paid on export goods, as per the provisions of Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended issued under Rule 18 of Central Excise Rules, 2002 along with copies of relevant export documents. The Assistant Commissioner, Central Excise, Tirunelveli Division, Tirunelveli- 627 007 after due process of law, sanctioned the said rebate claim filed by the applicant vide impugned order in originals collectively for Rs. 3,42,953/- (Rupees Three Lakh Forty Two Thousand Nine Hundred Fifty Three Only).

3. The Department has preferred an appeal against these orders in original on the following grounds:-

3.1 Tariff Rate of Duty leviable on Sub Heading No. 55092200 is 12% adv and the product is exempted under Notification No. 30/2004 CE dated 09.07.2004. As per the proviso to the Notification, if input credit is availed, duty has to be paid on the final product.

3.2 Proviso to Notification No. 30/2004-CE dated 09.07.2004 prescribes that full exemption on goods specified thereon is not applicable in cases where cenvat credit is availed on inputs.

3.3 In the instant case, the duty has been discharged from the capital goods credit account of the assessee. As per the proviso to notification No. 30/2004-CE, no obligation is cast on the assessee to pay duty in such a situation and the exemption granted in the said notification is absolute.

3.4 The claim of rebate is adopted by the assessee to encash the capital goods cenvat credit by paying duty in situations where the assessee is not legally bound to do so. Rule 5 of Cenvat Credit Rules, 2004 which deals with the refund of credit of duty lying unutilized by an assessee specifically excludes credit earned on the capital

4. The Appellate Authority vide impugned Orders in Appeal allowed the appeals filed by the Department and set aside Orders in Original passed by the rebate sanctioning authority. The Appellate Authority has observed that:-

4.1 The issue revolve round the Notification No. 30/2004-CE dated 09.07.2004 and the proviso attached therewith which exempts the excisable goods from whole of excise duty leviable thereon under Central Excise Act, 1944.

4.2 The proviso to the Notification was amended by CBEC Circular F. No. 334/3/2004-TRU (Pt.I) dated 09.07.2004 wherein the provision of Notification shall not apply where credit of duty on inputs has been taken under provisions of Cenvat Credit Rules, 2004.

4.3 The amended proviso is unambiguous and it clearly says that the exemption under the Notification is not available if the credit of duty paid on inputs is availed. In other words, when the respondent opted to clear the goods under Notification No. 30/20040-CE, the goods are liable for duty only when the credit of duty paid on inputs are availed, otherwise the

goods remains exempted from the whole of excise duty, irrespective of availment of Credit of duty paid on Capital Goods.

4.4 The Notification No. 30/2004-CE dated 09.04.2004 being an optional and conditional Notification, it is for the respondents to opt or not to opt for it but, it should be construed strictly and it cannot be interpreted according to the whims and fancies of the beneficiary.

5. Being aggrieved with the above Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds :-

5.1 The issue has been fully settled by the various decisions rendered by the Hon'ble Tribunal and the Revisionary Authority of the Government of India. The applicant has listed the case laws relied upon by them.

5.2 The impugned order is ex facie unsustainable in as much as it has been passed by the Appellate Authority without discussing or distinguishing the decisions rendered by the Hon'ble Tribunal and the Revisionary Authority of Government of India in the cited cases.

5.3 The amended proviso to the Notification No. 30/2004-CE dated 09.07.2004 reads as follows :

"provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty paid on 'inputs' has been taken under the provisions of Cenvat Credit Rules, 2004".

That the above proviso clearly means that the exemption provided under the said Notification is subject to the condition that no cenvat credit availed on 'inputs'.

5.4 The Commissioner (Appeals) erred in the interpretation of the above said amended proviso to mean, " the goods are liable for duty only when the credit duty paid on inputs are availed".

5.5 The Commissioner (Appeals) himself held at Para 7 of the impugned order that *"The Notification No. 30/2004 CE dated 09.07.2004 being an optional and conditional Notification, it for the respondents to opt or not to opt for it but, it should be construed strictly and it cannot be interpreted according to the whims and fancies of the beneficiary."*

5.6 The Commissioner (Appeals)'s above findings run contrary to the Revenue's claim in their appeal that the exemption under the Notification No. 30/2004 CE dated 09.07.2004 is not conditional but absolute and therefore duty paid by the Applicant from Capital goods credit is in violation of Section (5A)(1) of Central Excise Act, 1944.

5.7 The Commissioner (Appeals) did not explain as to how the cenvat credit availed by them on capital goods and utilized for payment of duty on exported goods is not admissible.

5.8 The applicant's removal of impugned yarns simultaneously for 'home consumption' claiming full exemption from the levy of duty under Notification No. 30/2004-CE dated 09.07.2004 as well as for export on payment of duty under claim of rebate of duty by utilizing cenvat credit availed on 'inputs' and 'capital goods' has been permitted and allowed by the Revenue since July 2010 without any objection in terms of Board's instruction vide Circular No. 845/3/2007-CX dated 01.02.2007 r/w Circular No. 948/9/2011 CX dated 05.07.2011.

5.9 The Commissioner (Appeals) erred in ignoring the Applicant's contention that in the eventuality of allowing the appeal filed by the Revenue on the ground that no duty was payable on the impugned exported gods and / or that the amount paid by the Applicant is not duty but deposit only, then the applicant would be entitled to take credit of the said rebate amount.

6. A personal hearing was held in this case on 08.01.2020. Shri Ramasubramanian, Sr. Manager (Legal) attended the hearing on behalf of the Applicant.

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

8. From the perusal of records, Government observes that the applicant was engaged in the manufacture of yarns & Sewing Threads falling under Chapter No. 52, 54 & 55 of the Central Excise Tariff Act, 1985 and cleared the same for home consumption as well as exports. The applicant was duly registered with Central Excise authorities. Government further observes that with reference to goods, the rate of duty is 12% vide Notification No. 29/2004-CE dated 09.07.2004. Vide Notification No. 29/2004-C.E., dated 9-7-2004, effective rates of duty of excise are prescribed for the Textile and Textile Articles thereof falling under Chapter 50 to Chapter 63 of Central Excise Tariff Act, 1985 and there are no conditions prescribed for availment of such exemption. Whereas, vide Notification No. 30/2004-C.E., dated 9-7-2004, full exemption is granted to Textile and Textile Articles thereof falling under Chapter 50 to Chapter 63 provided no credit of duty paid on inputs has been taken under the provisions of the Cenvat Credit Rules, 2002.The basic condition for availing exemption under Notification No. 30/2004-C.E., dated 9-7-2004 was that the applicant was not allowed to take Cenvat Credit on the inputs utilized for manufacturing/processing of the finished goods. Whereas for availing benefit under Notification No. 29/2004-C.E., dated 9-7-2004, there was no such condition of availing or not availing of the Cenvat Credit on the inputs utilized for manufacturing/processing of the finished goods.

9. The applicant had filed rebate claims under Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 – C.E.(NT) dated 06.09.2004. It is further observed that the applicant is clearing the goods for

home consumption by availing exemption under Notification No. 30/2004-CE whereas he is clearing the goods for export on payment of duty at concessional rate as prescribed under Notification No. 29/2004-CE. It is also observed that the applicant is clearing the goods for export on payment of duty through debit entry in the Cenvat Credit on Capital Goods.

10. The issue involved in the present case is that the applicant is alleged to have simultaneously availed the benefit of Notification No. 29/2004-CE & Notification No. 30/2004-CE. The Departments contention is that the applicant should have correctly chosen to avail the benefit of Notification No. 30/2004-CE since they were not availing CENVAT credit of duty paid on inputs and had cleared the goods without payment of duty for export. It was contended that in view of the non-availment of credit on inputs by them, the exemption under Notification No. 30/2004-CE was absolute. It has been averred that the procedure adopted by the applicant was a ruse to encash the CENVAT credit availed on capital goods which would otherwise not have been available to them under Rule 5 of the CCR, 2004.

11. The 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 manufacturer avails input cenvat credit, he would be ineligible for exemption under this Notification (30/2004-C.E., dated 9-7-2004). The Board vide Circular No. 845/03/2006-CX dated 01.02.2007 (issued under F. no. 267/01/2006-CX-

8) 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. The Government, therefore, infers 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.

12. The Government observes that 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.
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> 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.

13. 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.

14. The Government finds that the issue pertaining to the ambit of the provisions of sub-section (1A) of Section 5A of the CEA, 1944 is also relevant

to the facts of the case. In the instant case, the Department has put more emphasis to the contention that the applicant ought not to have paid duty while they were eligible to the benefit of exemption under Notification No. 30/2004-CE. The Government finds 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 above provision insists that the exemption granted absolutely from whole of duty of excise has to be availed and in that case there is no option to pay duty. However, in the instant case, goods are exempted under Notification No. 30/2004-C.E. (N.T.) subject to condition that no cenvat credit of duty on inputs has been taken under the provisions of the CENVAT Credit Rules, 2002. Consequently, the Notification No. 30/2004-CE does not pass muster as an unconditional notification. Now given that the Notification No. 30/2004-C.E. (N.T.) is a conditional one, the applicant was not under any statutory compulsion to avail it. Conversely, even if it is assumed for a moment that Notification No. 30/2004-CE is an absolute exemption, the contention that the applicant would be obligated to avail it has been rejected by the Hon'ble Gujarat High Court in the case of Arvind Ltd. Also, as per C.B.E. & C. Circular No. 845/03/06-CX dated 1-2-2007 and 795/28/2004-CX, dated 28-7-2004, both the Notifications can be availed simultaneously. The Government, therefore, holds that there was no restriction on the applicant to pay duty under Notification No. 29/2004-C.E. (N.T.)

15. 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 is unconditional in nature whereas Notification No. 30/2004-CE is conditional in nature. Against the backdrop of the judgment cited supra which holds that the exemption under an unconditional exemption notification is not binding on an assessee vis-à-vis another exemption notification which unconditionally grants partial exemption, there can be no case for compelling the applicant in the present case to avail the benefit of a conditional exemption notification such as 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.

16. The other major contention of the Department is that the applicant has chosen to avail the benefit of Notification No. 29/2004-CE in spite of being eligible for the benefit of Notification No. 30/2004-CE with the intent to encash the CENVAT credit availed on capital goods. In this regard, Government observes that the embargo of Notification No. 30/2004-CE in so far as CENVAT credit is concerned is limited to CENVAT credit of duty paid on inputs. The applicant is very well entitled to the benefit of CENVAT credit of duty paid on capital goods. Therefore, there can be no challenge to the availment of CENVAT credit on capital goods. In view of the judgment

discussed above and the Board circulars cited supra, the applicant cannot be disqualified from paying duty on the export goods by availing the benefit of Notification No. 29/2004-CE. Needless to say, payment of duty from the CENVAT account is equitable with duty paid through account current and hence would be admissible as rebate. The contention made out in the revision application about the legislative intention to prohibit encashment of capital goods credit is not borne out by any provision in the notifications or the sections.

17. In view of above, the Government sets aside the Order in Appeal No. MAD-CEX-000-APP-027-031/15 dated 15.04.2015 passed by the Commissioner of GST & Central Excise (Appeals-I), Coimbatore.

18. Revision application is allowed accordingly.

19. So, ordered.

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

ORDER No 487 /2020-CX (SZ) /ASRA/Mumbai DATED 02.06.2020

ATTESTED

To,
M/s. Madura Coats Private Limited,
Papavinasam Mills Post,
Ambasamudram, Tamilnadu- 627 422.

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

Copy to:

1. The Commissioner of CGST & CX, Madurai Commissionerate, Central Revenue Buildings, Bibikulam, Madurai- 625 002.
2. The Commissioner, CGST & Central Excise, (Appeals), Coimbatore, 4, Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai -2.
3. The Assistant Commissioner, CGST & CX, Tirunelveli Division, 2/1, Nehru Nagar, Near Jaba Garden, NGO 'A' Colony, Perumalpuram Post, Tirunelveli-627 007.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.