

SPEED POST



**F. No. 198/14/2018—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...12/13/21.....

Order No. 51/2021-CX dated 12-3-2021 of the Government of India, passed by Shri Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 61(SM)/CE/JPR-2018 dated 20.02.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Jaipur.

Applicant: Commissioner of CGST, Alwar.

Respondent: M/s. Dabur India Ltd., Alwar.

ORDER

A Revision Application No. 198/14/2018-R.A. dated 24.05.2018 has been filed by Commissioner of CGST, Alwar (hereinafter referred to as applicant) against Order-in-Appeal No. 61(SM)/CE/JPR-2018 dated 20.02.2018 passed by Commissioner (Appeals), Central Goods and Service Tax, Jaipur, wherein the appeal filed by the respondent, M/s. Dabur India Ltd., Alwar, against Order-in-Original No. 56(Central Excise)J.P.-I/2014-ADC dated 30.09.2014 has been allowed.

2. The brief facts leading to the present proceedings are that the respondent had filed rebate claims under Rule 18 of Central Excise Rules, 2002, in respect of the duty paid on the finished goods exported by them which were sanctioned by the jurisdictional excise authorities. The duty claimed as rebate was paid from the CENVAT account of the respondent. It is alleged by the applicant department that apart from availing CENVAT credit on inputs, they were also availing CENVAT credit on service tax on the strength of invoices issued by their corporate office at Ghaziabad which is separately registered as Input Service Distributer (ISD) under Rule 7 of the CENVAT Credit Rules, 2004. Some of the units of the respondent were availing area based exemption and the corporate office had availed full credit of service tax paid towards services of advertisement/sales promotion services and distributed the same to their duty paying manufacturing units including the

applicant's subject unit at Alwar. Since the ISD had passed on the service tax credit availed in the units engaged in the manufacture of exempted goods, being based in exempted areas, a show cause notice was issued by the department to demand and recover the CENVAT credit so availed and utilized. Separately, the department also initiated proceedings for recovery of the rebate amount, as erroneous refund, under Section 11 A of the Central Excise Act, 1944, since the duty rebated had been paid from the CENVAT amount under dispute. The Additional Commissioner of Central Excise, Jaipur, vide Order-in-Original No. 56(CE)/JP-I/2014-ADC dated 30.09.2014, ordered for recovery of erroneously sanctioned rebate amounting to Rs. 4,01,09,982/- along with interest and an equal amount of penalty. Aggrieved, the respondent filed an appeal before the Commissioner (Appeals) who, vide the impugned Order-in-Appeal, allowed the appeal filed by the respondent on the grounds that the applicant department had initiated two proceedings against the respondent in respect of the same CENVAT credit. It has been highlighted by the Commissioner (Appeals) that the Order-in-Original No. 09-10/2013 (CE) - Commr dated 30.01.2013 and No. 09/Commr/Ind/CEX/2013 dated 25.03.2013 of the Commissioner of Central Excise, Jaipur-I that confirmed the demand of disputed CENVAT credit has been set aside by the CESTAT vide Final Order No. 55565-55567/2017 dated 24.07.2017. The applicant has filed the subject revision application mainly on the ground that the aforesaid Final Order dated 24.07.2017 has been challenged before Hon'ble Rajasthan High Court and, as such, the issue of admissibility of CENVAT credit in

question has still not attained finality. Therefore, the impugned Order-in-Appeal merits to be set aside.

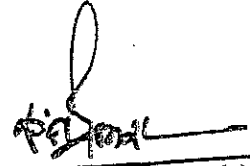
3. Personal hearing was held on 22.02.2021 and 10.03.2021 in virtual mode. Sh. Devendra Meena, Deputy Commissioner, appeared on 10.03.2021 for the applicant and reiterated the contents of the revision application and submitted that the CENVAT credit which was used to pay duty and claim rebate was obtained fraudulently which has tainted the rebate as well. Therefore, following the ratio of the judgment in the case of M/s Omkar Overseas [2003(156) ELT 167(SC)], the rebate was not admissible. Sh. Atul Gupta, Advocate, appeared for the respondent on 22.02.2021 and stated that the present proceedings are arising out of department's stand to disallow the CENVAT credit that was used to pay duty on export goods and claim rebate. Sh. Gupta pointed out that the demand of CENVAT credit confirmed by the Commissioner has been set aside by CESTAT and the matter is pending in the Hon'ble High Court, without any stay. Even if the demand was to be ultimately decided in favour of department, they would have to repay /reverse CENVAT credit. In such a situation, disallowance of rebate will cause double prejudice. Thus, revision application is not allowable on both grounds, independent of each other. In the hearing held on 10.03.2021, Sh. Atul Gupta stated that if the demand of CENVAT was to be finally held against them, they would have to pay the entire amount in cash along with interest and penalty etc. Therefore if the rebate was to be also recovered, they would be paying the same amount twice. Further, the order sanctioning rebate

has attained finality. Therefore, the amount cannot be recovered from them as erroneous refund.

4. The Government has examined the matter and finds that the instant revision application cannot be allowed for the following reasons:

- (i) The issue of disputed CENVAT credit is subjudice. As rightly pointed out by the respondent, if the case was to be finally held against them, they would have to repay the entire amount along with interest and penalty etc. In such a case, if the rebate claimed is also to be recovered, the disputed amount will be recovered twice from the respondent.
- (ii) The ground taken by the applicant department, by relying on Omkar Overseas (supra), that the alleged fraud in respect of CENVAT credit has also tainted the rebate and, therefore, it should be recovered, is misconceived. In the proceedings below, no allegation of fraud is made in respect of claim of rebate per-se. If the alleged fraud in respect of CENVAT credit was to be attached to the rebate merely because duty was paid out of CENVAT account, in that case such fraud would equally attach to the domestic clearances also which would have been made upon payment of duty from the same CENVAT account. There is nothing on record that the department has demanded duty etc. in respect of such domestic clearances.
- (iii) Notwithstanding the above, the order confirming the demand of disputed CENVAT credit has itself been set aside by the CESTAT and there is no stay operating in favor of the department.

5. In view of the above, the Government finds no reason to interfere with the impugned Order-in-Appeal and the revision application is rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

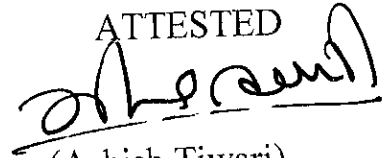
The Commissioner of Central Goods & Service Tax,
"A" Block, Surya Nagar,
Alwar- 301 001

G.O.I. Order No. 5/21-Cx dated 12-3-2021

Copy to:-

1. M/s. Dabur India Ltd., Alwar.
2. Commissioner (Appeals), Central Excise & CGST, Jaipur.
3. Sh. Atul Gupta, Advocate, 5, Jangpura Extension, Link Road, New Delhi-110014.
4. PA to AS (Revision Application)
5. Spare Copy
6. Guard File

ATTESTED



(Ashish Tiwari)

Assistant Commissioner (R.A.)