REGISTERED
SPEED POST

F.NO. 195/12-16/2015-RA
F.No. 195/51-54/2018-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 13.11.18

ORDER NO. 570-578/18-Cx dated 12-11-2018 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 Applications filed under Section 35EE of Central Excise Act, 1944, against the Orders-in-Appeal No. LUD-EXCUS-000-APP-232-236-14-15 dated 15.10.2014 and LUD-EXCUS-001-APP-282-288-14-15 dated 27.11.2014, passed by the Commissioner of Goods & Service Tax (Appeals), Ludhiana
APPLICANT	:	M/s Vardhman Yarns and threads Ltd (Unit-I)
RESPONDENT	:	The Commissioner of Central Goods & Service Tax, Ludhiana

ORDER

Revision Applications No. 195/12-16/2015-RA and 195/51-54/2018-RA have been filed by M/s Vardhman Yarns and Threads ltd (Unit-I), (hereinafter referred to as the applicant) against Orders-in-Appeal No. LUD-EXCUS-000-232-236-14-15 dated 15.10.2014 and LUD-EXCUS-000-APP-282-288-14-05 dated 27.11.2014, passed by the Commissioner of Central Goods & Service Tax (Appeals), 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 and the original adjudicating officer vide the above mentioned orders rejected the rebate claims of the applicant on the ground that the applicant had wrongly paid the duty from CENVAT credit on exported goods despite of availing full exemption from duty under notification no. 30/2004-CE dated 09.07.2004 on the condition of non availment of Cenvat credit. The Commissioner (Appeals) also rejected their appeals on the grounds that the applicant was not required to pay any duty on the exported goods under Notification No. 30/2004-Ce and they had also claimed composite duty drawback of Customs, Central Excise and Service Tax component as mentioned in Column-A of the Drawback Schedule because of which 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 as it would be double benefit for the same export. Being aggrieved, the applicant has filed the above mentioned revision applications on the grounds that they have correctly paid duty as they were having option to pay duty under Notification No. 29/2004-CE dated 09.07.2004, Commissioner (Appeal)'s reliance on the Punjab & Haryana High court's decision in the case of Nahar Industrial Enterprises Ltd, {2009(235)ELT(P&H)} in his order is erroneous as the said decision is entirely distinguishable from their case,

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 12.09.2018 and Sh. Sanjay Malhotra, Company Secretary, and Sh. Rajesh Chopra, Sr. Vice President, appeared for personal hearing on behalf of the applicant who reiterated the grounds of revision already stated in their revision application. They also placed reliance on the Rajasthan High Court's decision in the case of M/s Iscon Surgicals Ltd vs UOI 2016(2)TMI1033 wherein it is held that rebate of duty paid on exported goods and inputs used in the exported goods is admissible simultaneously as already held by the Apex Court in the case of M/s Spantex Industries Ltd. Vs Union of India, 2015(324)ELT686(SC).

4. The Government has examined the matter and observed that the goods manufactured by applicant were exported on payment of duty from CENVAT Credit and no doubt has been expressed by any departmental authority about this fact. One of the two main reasons cited for rejection of the rebate claims of the applicant by AC, Division and Commissioner (Appeals) is that the applicant was not authorized to pay duty of excise on exported goods as the applicant was eligible for availing full exemption from duty on its product under notification Number 30/2004-CE dated 09.07.2004. The applicant has also not denied this fact and has accepted that they had also availed notification No. 30/2004-CE dated 09.07.2004 and not availed any CENVAT credit in respect of any input used for manufacturing the exported goods and even in respect of other goods during the relevant time. But the applicant has stated that they had already accumulated CENVAT credit prior to availing the full exemption from duty under

notification no. 30/2004 and the same was utilized while clearing the exported goods by paying duty @ 5% as stipulated under notification No. 29/2004-CE dated 09.07.2004 for which there is no legal bar under any legal provisions.

5. There is no dispute that the applicant's product i.e. sewing thread was covered under both notification no. 29/2004 and 30/2004 and these notifications being independent from each other, the applicant had option to avail any of the notification and even both could be availed simultaneously in respect of different lots/consignments of the sewing thread. When the applicant availed full exemption from duty in respect of all or some textile goods under notification no. 30/2004 it is beyond any doubt that the applicant could not avail CENVAT credit on input used in relation to such goods and if they availed the same the applicant was not eligible from full exemption from duty under the said notification no. 30/2004. But the department's case against the applicant is not that the applicant has wrongly availed full exemption from excise duty in respect of its final product and at the same time they availed CENVAT credit on the inputs for use in manufacturing the same finished product. Had it been so, the department should have denied the full exemption from duty availed by the applicant and demanded Central Excise duty at the rate applicable to their product which is 5% as per notification no. 29/2004. But there is no allegation from lower authorities that the applicant has wrongly availed exemption under notification no. 30/2004.

6. As regards the issue whether the applicant has committed any error by paying duty of excise on exported goods, it is already stated in above para that the applicant had option to pay duty under notification no. 29/2004 and was not bound to avail notification no. 30/2004 only. Since the applicant has opted to pay duty on exported goods under notification no. 29/2004 by utilizing CENVAT Credit already available with them, no legal error can be attributed to the applicant. It is also not the case of lower authority that CENVAT credit was not legitimately earned by the applicant prior to opting for notification no. 30/2004.

- Since the applicant has undoubtedly exported the goods on payment of Central excise duty and no contravention of any other condition stipulated in Rule 18 of Cenvat Credit Rules, 2002 and notification no. 19/2004-ce (NT) has been alleged against the applicant in the case, rebate of duty is admissible to the applicant. The Government also agrees with the applicant's contention that the Commissioner (Appeals) has wrongly placed reliance on Punjab & Haryana High Court's decision in the case of Nahar Industrial Enterprises Ltd, for denying the rebate of duty to them. On detailed scrutiny of the aforesaid decision, it is noticed that M/s Nahar Industrial Enterprises ltd had paid Central Excise duty through CENVAT credit at tariff rate of 16% even when the effective rate of duty on the exported goods was only 4% under Notification No. 29/2004. Thus, they had paid excessive duty amount through CENVAT credit which was not payable at all and it was found glaring as they had paid duty @ 4% when they cleared the same product in domestic market. Thus, their intention for encashment of their accumulated CENVAT credit by paying at tariff rate of duty and by ignoring effective rate of duty was obvious. Considering these facts High Court of Punjab & Haryana held that excessive duty to the extent of 12% paid through CENVAT credit cannot be allowed to be rebated through cash and for such excess payment CENVAT credit can only be restored. But in the instant case no such excess payment of duty has been made and the applicant has paid duty on the exported goods @ 5% only as per Notification No. 29/2004-CE for which rebate of duty is admissible in cash under Rule 18 read with Notification No. 19/2004-CE. The CBEC, vide its Circular No. 687/3/2003-Cx, dated 03.01.2003, has also clarified that rebate of duty is to be given in cash only. Government's above decision to allow rebate of duty in this case is also supported by various orders of Government of India passed earlier in the case of Nahar Industrial Enterprises, 2012(283)ELT444(GOI), Jai Corp Ltd., 2014(312)ELT 961 (GOI), Ginni Filament Ltd Order No. 126-129/17-Cx dated 11.09.2017 and Hon'ble Himachal Pradesh High Court decision in the case of Auro Weaving Mills, 2017(345)ELT350(HP) which are relied upon by the applicant.

7. Coming to the second main reason for rejection of the rebate claims that the applicant has already availed drawback of duty and rebate of duty, if granted, would amount to double benefit, it is observed that the Commissioner (Appeals) has already considered the issue involved in the present revision applications in details in their Orders-in-Appeal and rejected the applicant's appeals 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. 10 of Notification 110/2015-Cus(NT) dated 16.11.2015, 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. The applicant has also not denied these facts and has only averred that rebate of duty and drawback of duty are different incentives. Thus the Central issue is whether rebate of duty on exported goods can be granted even when the exporter had already availed composite drawback of duty. The Government finds that this issue has already been considered by the Hon'ble Madras High court of Madras in the case of Raghav Industries Ltd. Vs Union of India {2015(334)E.L.T.584 (Mad.)} and it has been clearly held that availment of drawback of duty as well as rebate of duty on the exported goods will amount to double benefit and, therefore, can not be availed simultaneously. Apparently this decision of the Madras High Court was not challenged by the Raghav Industries also before the Division Bench of Madras High Court. Subsequently the above decision in Raghav Industries Ltd has been followed by Madras High Court in the case of Kadri Mills(CBE)Ltd. Vs Union of India {2016(334)E.L.T.642(Mad.)}. 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)ELT 575(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 recently in its Order No. 4394-97/18-Cx dated 13.07.2018 in the case of M/s Anshupati Textiles and in Order No. 195/795/2010 dated 04.09.2018 in the case of M/s RSWM. The applicant has placed reliance of

Rajsthan High Court decision in the case of M/s Iscon Surgicals as mentioned in Para 3 above wherein it is briefly held as follows:

"3. Before us, the argument advanced by learned counsel is that Rule 18 of the Central Excise Rules, 2002, on which the impugned action as well as the impugned order is based has already been interpreted by Hon'ble Supreme Court of India in M/s Spantex Industries Ltd. vs Commissioner of Central Excise and as per the view taken, the exporters are entitled to both the rebates under Rule 18 and not one kind of rebate only.

4. Having considered the facts, we are of the opinion that the issue involved in the instant petition for writ is no more res integra in light of the law laid down by Hon'ble Apex Court in the case of M/s Spantex Industries Ltd. (Supra).

5. Accordingly, the writ petition is allowed by relying upon the judgement above. The order passed by the revisionary authority dated 23.07.2012 is hereby quashed. The petitioner is declared entitled to have rebate as per Rule 18 ibid."

From the above observations of Hon'ble Rajsthan High Court, it is evident that entire matter has been decided in reference to Supreme Court's decision in the case of M/s Spantex Industries holding that the exporter are entitled to both the rebate under Rule 18 and not one kind of rebate only. Even in concluding Para 5 the petitioner is declared entitled to have rebate as per Rule 18 ibid which only speaks regarding rebate of duty in respect of inputs used in the exported goods and the rebate of duty paid on the exported goods. Thus, the Hon'ble Rajsthan High Court has not considered the main issue whether rebate of duty in respect of exported goods as well as drawback of duty can be availed simultaneously. Further no reference is made to the above referred two decisions of the Madras High Court wherein it is categorically held that rebate of duty and drawback of duty can not be availed simultaneously. Therefore, it is felt that while the Hon'ble High Court of Rajsthan has allowed the Writ Petition of

Iscon Surgicals Ltd in the aforesaid order, the legal issue whether rebate of duty and drawback of duty can be availed simultaneously has not been decided by writing even a single line and accordingly it can not be followed as a precedent on the issue. On the other hand, the Madras High Court in the above two decision has clearly held that above two benefits can not be availed simultaneously and these decisions have not been apparently reversed by any superior court till now. Therefore, these decisions are more relevant in the present proceeding. Thus the Government is unable to accept the applicant's above contention that they are eligible to avail both the benefit at the same time.

8. Accordingly, the Revision Applications are rejected.

12.11.18

(R. P. Sharma)
Additional Secretary to the Government of India

M/s. Vardman Yarns and Thread Ltd. (Unit -I),
Phagwara Road,
Hoshiarpur, Punjab.

570-578/18-Cx
ORDER NO. CX dated 12-11-2018

Copy to:-

1. The Commissioner of Goods & Service Tax, Jalandhar (Hqrs at Ludhiana), DGST House, F Block, Rishi Nagar, Ludhiana 141001
2. The Commissioner of Goods & Service Tax (Appeals), Ludhiana, C DGST House, F Block, Rishi Nagar, Ludhiana 141001
3. The Assistant Commissioner of Central Excise, Phagwara Division, Hargobind Nagar, Phagwara, Punjab.
4. Mr. Rupinder Singh, Advocate, BSM Legal, Q-6, Hauz Khas Enclave, First Floor, New Delhi 110016
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED
12/11/18
(Nirmla Devi)
Section Officer(R.A. Unit)