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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
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. 198/87/13-RA / 3073

Date of Issue: 22.08.2022

ORDER NO. 702/2022-CEX (WZ)/ASRA/MUMBAI DATED 19.07.2022
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : Commissioner of CGST, Kolhapur Commissionerate.

Respondent : M/s Indo Count Industries.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. –
P-II/AK/39/2013 dated 24.05.2013 passed by the
Commissioner(Appeals), Central Excise, Pune-II.

ORDER

This Revision Application has been filed by the Commissioner of CGST & CX, Kolhapur Commissionerate (hereinafter referred to as "Applicant") against the Order-in-Appeal No.-P-II/AK/39/2013 dated 24.05.2013 passed by the Commissioner(Appeals), Central Excise,Pune-II.

2. The brief facts of the case are that M/s. Indo Count Industries T3, Five Star MIDC, Talandage, Tal-Hatkanangle, Kolhapur-416216 (hereinafter referred as "the Respondent") are registered with Central Excise and are engaged in the manufacture of excisable goods viz. 100% cotton fabrics and made-up articles of cotton falling under Ch. Head 52 & 63 of Central Excise Tariff Act, 1985. They were exporting the said goods as well as clearing the goods for domestic market. They were availing the benefit of exemption Notification no. 30/2004 CE dated 09-07-2004 as amended in case of domestic clearances. The Respondent were paying duty at concessional rate i.e. 4%, 5% and 6% in case of clearances for export under claim of rebate in terms of Notification No. 29/2004 CE dated 09-07-2004 as amended. The Respondent had exported the finished goods without payment of duty which were re-imported by them due to rejection. They had paid the duty on these finished goods at the time of importation. They availed the cenvat credit of the said duty paid on importation, in their cenvat credit account maintained for Capital Goods. They utilized this credit for the payment of duty for goods cleared for export and subsequently filed rebate claims for the duty paid at the time of export. A show cause notice dated 14.09.2012 was issued to the Respondent on the issue that they had violated Rule 3 of the Cenvat Credit Rules, 2004 and also the condition of the notification no. 30/2004 leading to inadmissible cenvat credit and therefore the same could not be used for the payment of duty on export goods which made the said rebate claims liable for rejection. The adjudicating authority while deciding the show cause notice rejected the rebate claims vide order in original No. Adj/135/Kop-I/2013-13 dated 18.10.2012. Aggrieved by the aforesaid OIO, the Respondent filed appeal with the

Commissioner Appeal. The Commissioner Appeal vide his Order-in-Appeal No. P-II/AK/39/2013 dated 24.05.2013 allowed the appeal with consequential belief and set aside the OIO.

3. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant had filed this revision Application on the following grounds :

- i. As per provisions of Rule 16 of Central Excise Rules, 2002, duty paid goods can be brought to factory and credit of duty paid on such receipted goods can be availed provided such goods suffers duty incidence at the time of initial removal. The Rule 16 reads as under:

"RULE 16: Credit of duty on goods brought to the factory:

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT credit Rules, 2002 and utilize this credit according to the said rules"

On careful reading of the Rule, it appears that for availing credit under this Rule, the subject goods are required to suffer duty incidence at the time of its removal. Here, in the present case, the goods were initially cleared without payment of duty. As such, the basic condition for availment of credit has not been fulfilled. Therefore, credit of under said Rule 16 is not admissible.

- ii. As per provisions of Rule 9 (c) of Cenvat Credit Rules, 2004, a Bill of Entry has been mentioned as a specified duty paid document for availing credit of duty so paid. In the present case, concerned bill of entries have been assessed to "Nil" duty and hence the credit availed by claimant is inadmissible.
- iii. The claimant is availing benefit of exemption under Notification No. 30/2004-CE dated 29.07.2004. Therefore, they are not supposed to avail

Cenvat credit of duty paid under any other head other than capital goods. The rejected goods are final product of claimant and therefore it Relatel278/2012 cannot be termed as capital goods. The Circular No. 845/03/2006-CX dated 01.02.2007, referred to, by the Commissioner'[Appeals), has prescribed procedure to be followed and the manner for availment of cenvat credit where benefit of Notification No 29/2004-CE and 30/2004-CE both dated 29.07.2004 is availed simultaneously. As per the said circular manufacturer has to maintain separate books of accounts for goods in respect of which benefit of Notification No. 29/2004 is availed and similarly for goods in respect of which benefit of Notification No. 30/2004 is availed and not to take credit initially and instead take only proportionate input credit on inputs used in the manufacture of finished goods cleared by him on payment of duty. Such proportionate credit should be taken at the end of the month only. It appears that the circular speaks about credits to be availed on inputs used for exempted final product as well as dutiable final product. In the present case, the claimant had not followed the procedure as per Circular and only availed credit of duty paid on re-imported goods (finished goods) treating them as Capital Goods.

- iv. In view of the aforesaid grounds, the Order-in-Appeal No PII AK 39/2013 dated 24.05.2013 passed by the Commissioner [Appeals], Central Excise,Pune II is not legal and proper and prayed to draw a line in the stand "Whether, the Commissioner (Appeal) is right in allowing the appeal by way of setting aside the Order-in Original No. ADJ/135/KOP-1/2012-13 [127/REB/2012-13] dated 18.10.2012 and allowing rebate to the claimant?"

4. Personal hearing in the matter was fixed on 10.02.2022, Shri Shrikant Raut, DC appeared online for the hearing and reiterated their earlier submission. He submitted a written submission dated 09.02.2022 on the matter and requested to allow the application.

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

6. On perusal of the records, Government finds that there are two different issues involved in the instant case as below :

- a) Whether the Respondent had availed the inadmissible cenvat credit by violating Rule 3 of the Cenvat Credit Rules, 2004 and also the condition of the notification no. 30/2004 ?
- b) Whether the rebate claim is liable for rejection if the payment of duty on exported goods is made from such cenvat credit?


7. As far as the Respondent's eligibility to avail cenvat credit in question, the same has been elaborately discussed under para 8.1 to 8.4 of the OIA passed by the appellate authority before concluding that cenvat credit in question cannot be held as inadmissible and appellate authority found respondent entitled for rebate. Applicant has not been able to counter the points made by the appellate authority.. Department's contention seeking to reject the rebate claim at this stage without sufficient reason is incorrect and not legal.

8. Now with regards to the claim of rebate, the Government notes paragraph 8.4 of the Manual of Instructions issued by the CBEC specifies that the rebate sanctioning authority has to satisfy himself in respect of essentially two requirements. The first requirement is that the goods cleared for export under the relevant ARE-1 applications were actually exported. The second is that the goods are of a duty paid character. The object and purpose underlying the procedure which has been specified is to enable the authority to duly satisfy itself that the rebate of central excise duty is sought to be claimed in respect of goods which were exported and that the goods which were exported were of a duty paid character.

9. The Government holds that in order to qualify for the grant of a rebate under Rule 18, the mandatory conditions required to be fulfilled are that the goods have been exported and duty had been paid on the goods. Both these facts were never contested by the applicant in the instant case. Also, Applicant's argument that the Respondent had paid the duty from the cenvat credit itself proves that the goods were of duty paid character. Since, both these conditions have been met, rebate cannot be denied to the Respondent.

10. In view of above discussions, Government upholds the Order-in-Appeal No.-P-II/AK/39/2013 dated 24.05.2013 passed by the Commissioner(Appeals), Central Excise, Pune-II. Adjudicating authority is directed to disburse the rebate claim within 8 weeks of the date of receipt of this order.

11. The Revision application is disposed off on the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No: 702/2022-CEX (WZ) /ASRA/Mumbai Dated 19.07.2022

To,

M/s. Indo Count Industries Ltd.,
T3, Five Star MIDC, Talandage, Tal-Hatkanangle,
Kolhapur-416216.

Copy to:

1. The Commissioner(Appeals), Central Excise, Pune-II, B wing, 4th Floor, ICE House, Sassoon Road, Pune-411001.
2. The Principal Commissioner CGST & CX, Pune Zone, Pune.
3. The Deputy Commissioner, CGST, Div-III, Kolhapur Commissionerate, 228/229, E ward, Tarabai Park Kolhapur 416003.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.