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F.No.198/38-39/2014-RA  
F.No.198/40-41/2014-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....

Order No. 98-101/18-Cx dated 5-2-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & 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 orders-in-appeal No.09-10(OPD)CE/JPR-II/2014 dated 31.01.14 and No.05-06(OPD)CE/JPR-II/2014 dated 30.01.14 passed by the Commissioner (Appeals) Jaipur-II

Applicant : Commissioner of Central Excise, Jaipur-II

Respondent : M/s Nitin Spinners Ltd., Bhilwara (Rajasthan)

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**ORDER**

The revision applications No.198/38-39/2014-RA dated 13.5.2014 and No.198/40-41/2014-RA dated 13.5.14 are filed by Commissioner of Central Excise, Jaipur-II (hereinafter referred to as the applicant) against the Orders of Commissioner (Appeals), Jaipur-II, bearing No.09-10(OPD)CE/JPR-II/2014 dated 31.01.14 and No.05-06(OPD)CE/JPR-II/2014 dated 30.01.14 who has allowed the rebate of duty to the respondent M/s Nitin Spinners Ltd., Bhilwara (hereinafter referred to as the respondent).

2. The revision applications have been filed mainly on the ground that the respondent was availing exemption from excise duty under Notification No.30/2004-CE dated 9.7.04 and thus no duty was payable on the exported goods and, therefore, rebate of duty is not admissible in this case.

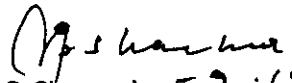
3. A personal hearing was held in this case on 14.12.17 and it was attended by Shri K.Gurumurthy, Advocate, for the respondent. However, no one appeared for the applicant and even no request for any other date of hearing is received from the applicant from which it is implied that the applicant is not interested in availing personal hearing.

4. On examination of all relevant records, it is noticed that the revision applications are filed mainly on the premise that the respondent was not authorized to pay a duty of excise on exported goods as the respondent was already availing full exemption from duty on their goods under Notification No.30/2004-CE. On the other hand the Commissioner (Appeals) in his Order has held that the said exemption is conditional one and cannot be forced on an assessee. It is only in case of an unconditional notification that an assessee cannot pay duty as provided under Section 5A(1A) of the Act. Hence even if Cenvat Credit was not taken, the assessee was free to pay duty at the effective rate prescribed under Notification No.29/2004-CE. Moreover, it is not in dispute that the Cenvat Credit of Capital goods which was used for paying duty was not properly taken. The Government also finds that there is no dispute that the respondent's product i.e. textile goods were covered under both Notification No.29/2004 and 30/2004 and these Notifications being

independent from each other the respondent had option to avail any of the two Notifications and even both could be availed simultaneously in respect of different lots/consignments of the textile goods. When the respondent 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 respondent could not avail CENVAT credit of inputs used in relation to such goods and if they availed CENVAT credit the respondent was not eligible from full exemption from duty under the said Notification No.30/2004. But the department's case against the respondent is not that the respondent 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, department should have denied the full exemption from duty availed by the respondent and demanded central excise duty at the rate applicable to their product which is 4% as per Notification No.29/2004. But there is no allegation from lower authorities that the respondent has wrongly availed exemption under Notification No. 30/2004.

5. Thus the Government agrees with the view of the Commissioner (Appeals) that the respondent had option to pay duty under Notification No.29/2004 and was not bound to avail Notification No.30/2004 only. Since the respondent 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 respondent. It is also not the case of applicant that CENVAT credit was not legitimately earned by the respondent prior to opting for Notification No.30/2004. Since the respondent 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, rebate of duty is admissible to the respondent.

6. In view of the above discussions, revision applications are rejected.

  
(R.P.Sharma) 5.2.18

Additional Secretary to the Government of India

Commissioner of Central Excise, Jaipur-II,  
New Central Revenue Building,  
Statue Circle, "C" Scheme, Jaipur-302505

Order No. 9810/118-Cx dated 5-2-2018

Copy to:

1. M/s Nitin Spinners Ltd., 16-17 KM, Stone Chittor Road, Hamigarh, Bhilwara, Rajasthan
2. Commissioner of Customs & Central Excise-II (Appeals), Jaipur-II, New Central Revenue Building, Statue Circle, "C" Scheme, Jaipur-302505
3. The Deputy Commissioner, Central Excise Division, Bhilwara
4. Shri K.Gurumurthy, Advocate, Q-6, 1<sup>st</sup> Floor, Hauz Khas Enclave, Opp. IIT Gate, New Delhi-110016
5. PA to AS(RA)
6. Guard File.
7. Spare Copy

ATTESTED

*5.2.2018*

(Debjit Banerjee)  
STO (Revision Application)