

F.No. 195/96-122/16-RA
F.No. 195/123-125/16-RA
F.No. 195/126-129/16-RA
F.No. 195/459/16-RA

REGISTERED
SPEED POST



F.No. 195/96-122/16-RA
F.No. 195/123-125/16-RA
F.No. 195/126-129/16-RA
F.No. 195/459/16-RA

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHICAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue. 13/11/18

ORDER NO. 535-569/18-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 35 EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Applications filed under Section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal No.JNK/EXCUS/000-APP/568 to 661/15-16 dated 31.03.2016, JNK/EXCUS/000-APP/76 to 126/16-17 dated 10.05.2016, JNK/EXCUS/000-APP/08 to 74/16-17 dated 26.04.2016 and JNK/EXCUS/000-APP/131/16-17 dated 23.06.2016, passed by the Commissioner of Central Excise (Appeals), Chandigarh

Applicant : M/s. Chenab Textiles Mills

Respondent : Commissioner of Central Goods & Service Tax, Jammu.

ORDER

The following revision applications have been filed by M/s. Chenab Textile Mills (herein after referred to as the applicant) against the orders of the Commissioner of Central Excise (Appeals), Chandigarh.

Revision Application No.	Order-in-Appeal No. & Date	Amount involved (in Rs.)
F.No. 195/96-122/16-RA	JNK/EXCUS/000-APP/568 to 661/15-16 dated 31.03.2016	3,84,88,649/-
F.No. 195/123-125/16-RA	JNK/EXCUS/000-APP/76 to 126/16-17 dated 10.05.2016	46,80,603/-
F.No.195/126-129/16-RA	JNK/EXCUS/000-APP/08 to 74/16-17 dated 26.04.2016	1,20,99,572/-
F.No. 195/459/16-RA	JNK/EXCUS/000-APP/131/16-17 dated 23.06.2016	1,38,34,743/-

2. The common facts involved in all the above mentioned Revision Applications are that the Commissioner (Appeals), vide the above mentioned Orders-in-Appeals, rejected the rebate claims of the applicant mainly 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. Being aggrieved, the applicant has filed the above mentioned revision applications on the grounds that they has correctly paid duty as they were having option to pay duty under Notification No. 29/2004-CE dated 09.07.2004 and, therefore, rebate of duty in respect of exported goods cleared under said Notification is admissible to them. Further 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 also erroneous as the said decision is entirely distinguishable from their case.

3. Personal Hearing in the matter was attended by Shri Rahul Tangri, Advocate, and Sh. P.K. Mittal, Sr. Vice President of M/s Chenab Textile Mills, on 29.08.2018 for the applicant and they reiterated the submissions already made in their Revision Applications. The Assistant Commissioner of the Sambha Division, however, availed hearing on 14.09.2018 and contended that O-I-A is legal and correct and the revision application is not maintainable.

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. Main reason cited for rejection of the rebate claim of the applicant by AC, Division and Commissioner (Appeal) 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 @ 4% and 6% as stipulated under notification No. 29/2004-CE dated 09.07.2004 and notification No. 07/2012-CE dated 17.03.2012 respectively for which there is no legal bar under any legal provisions.

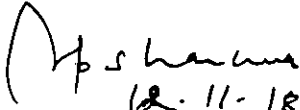
5. There is no dispute that the applicant's product i.e. 100% yarn, Polyester cotton yarn, Viscose Cotton yarn etc. were covered under both notification no. 29/2004, 07/2012 and 30/2004 and these notifications being independent from each other, the applicant had option to avail any of the two notification and even both could be availed

simultaneously in respect of different lots/consignments of the textile yarns. 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 availed CENVAT credit of input used in relation to such goods and if they avail CENVAT credit 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 4% and 6% as per notification no. 29/2004 and 07/2012 respectively. 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 07/2012 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 and 07/2012 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-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 @ 4% and 6% only as per Notification No. 29/2004-CE and Notification No. 07/2012-CE respectively 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. In view of the above facts and discussions, the Government set aside the Commissioner (Appeals)'s orders as mentioned above and all the revision applications filed by the applicant are allowed.


12.11.18
(R.P.SHARMA)

(Additional Secretary to the Government of India)

M/s. Chenab Textile Mills,
Kathua,
Jammu & Kashmir - 184102

Order No. 535-569/18-Cx dated 12-11-2018

Copy to:-

F.No. 195/96-122/16-RA
F.No. 195/123-125/16-RA
F.No. 195/126-129/16-RA
F.No. 195/459/16-R/

1. The Commissioner of Central goods and service tax, 32-OB, Rail Head Complex, Bahu Plaza, Jammu-180012
2. The Commissioner (Appeals), Central Excise, Chandigarh-II, C.R. Building, Plot No. 19, Sector 17-C, Chandigarh
3. The Assistant Commissioner, Central Excise Division, 32-OB, Rail Head Complex, Bahu Plaza, Jammu-180012
4. Shri V. Lakshmi Kumaran & Sridharan, , Advocate, SCO No. 59, 1st floor, Sector 26, Madhya Marg, Chandigarh 160019
5. PS to AS (Revision Application)
6. Guard File
7. Spare Copy.

ATTESTED

N.D.
12-11-18

(Nirmala Devi)
Section Officer (RA)