

REGISTERED
SPEED POST



F.No. 195/05-14/2021—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..19/5/22

Order No. 13-22 | 22-CX dated 19-05-2022 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
Orders-in-Appeal No.124-
133(SM)/CE/JPR/2021 dated 27.10.2021
passed by the Commissioner (Appeals),
Customs & Central Excise, Jaipur.

Applicant : M/s Balkrishna Industries Ltd., Chopanki.

Respondent : Commissioner of CGST, Alwar.

ORDER

Ten Revision Applications, bearing Nos. 198/05-14/2021-R.A. all dated 30.12.2021, have been filed by M/s Balkrishna Industries Ltd., Chopanki (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. 124-133(SM)/CE/JPR/2021 dated 27.10.2021 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur, whereby the Applicants' appeals against Order-in-Original No. ALW-EXCUS-Addl. Comm. 12-21/20-21 dated 17.07.2020, passed by the Additional Commissioner, CGST, Alwar, have been rejected.

2. The brief facts leading to the present proceedings before the Government are that the Applicants had filed rebate claims for Rs. 12,84,95,806/- paid through CENVAT credit account on the export of finished goods. The rebate claims were sanctioned by the Assistant Commissioner of Central Excise Division, Bhiwadi, vide OsIO No. 30-37/2015-16(Refund) dated 27.04.2015, 40/2014-15 dated 27.02.2015 and 41/2014-15 dated 27.02.2015. These orders sanctioning rebate were reviewed by the department on the ground that the rebate claims were not admissible to the Applicants as the duty paid was paid from inadmissible CENVAT credit, which was availed on the basis of duty paid invoices issued by domestic suppliers of inputs against the invalidation letters. Show Cause Notices for recovery of rebate already paid were issued and the demands were confirmed by the aforesaid OIO dated 17.07.2020. Aggrieved, the Applicants filed appeals before the Commissioner

(Appeals), who has rejected the appeals on the ground that the issue is settled by GOI Order No. 04-13/2020-CX dated 08.01.2020 in the Applicants' own case wherein the same issue has been decided against them.

3. The RAs have been filed, mainly, on the grounds that the inputs used in manufacture of goods exported under Advance Licence were obtained from domestic manufacturers, who cleared the said inputs on payment of duty; that the notification no. 44/2001-CE(NT) dated 26.06.2001, which exempts the excisable goods supplied to the Advance Licence holder, is a conditional notification; that these conditions have not been satisfied in the present case and, hence, duty was correctly paid; that there is no exemption notification issued under Section 5A of the Central Excise Act, 1944 unconditionally exempting the goods; that this matter has been decided in their favour in their own case by the Tribunal; and that the matter has attained finality as the department has not contested the Order-in-Appeal dated 13.11.2014 granting them rebate.

4. Personal hearing was granted on 21.03.2022, 04.04.2022, 13.04.2022 and 17.05.2022. In the hearing held on 13.04.2022, Sh. R.K. Jha, AGM appeared for the Applicants and reiterated the contents of the RA. He highlighted that, in this case, rebate has been denied on the ground that the CENVAT credit from which duty was paid was incorrectly availed. The issue of incorrect availment of CENVAT credit was decided in their favour by CESTAT [2014 (309)

ELT 354 (Tri-Del)] and this Order of CESTAT has been upheld by Hon'ble Rajasthan High Court vide judgment dated 24.04.2016. This judgment of the High Court has been accepted by the Department, vide Circular No. 1063/221/20218-CX dated 16.02.2018. Sh. Jha sought a short adjournment to place on record related documents. Another personal hearing was held on 17.05.2022 when Sh. Jha submitted two separate synopsis with relevant documents in respect of:

- (i) the proceedings for denial of CENVAT.
- (ii) the proceedings for denial of Rebate.

None appeared for the Respondent department nor any request for adjournment has been received.

5. The Government has examined the matter. Upon careful consideration, the Government finds that the subject Revision Applications merit to be allowed for the following reasons :

- (i) The Applicants exported goods in discharge of export obligation under Advance Licence obtained by them. The inputs used in the manufacture of resultant products exported by them were procured from domestic manufactures against invalidation letters. It is the case of the department that the supply of excisable goods to the holders of Advance Licence is exempted from payment of duty in terms of notification no. 44/2001-CE(NT) dated 26.06.2001. Therefore, the duty paid by the domestic manufacturers while clearing such goods to the Applicants herein was not

required to be paid and, consequently, the CENVAT credit availed by the Applicants against duty, which was not required to be paid, was not admissible. Finally, since the duty has been paid on the export goods from the incorrectly availed CENVAT credit, the rebate of such duty is also not admissible. The Government observes that this issue of admissibility of CENVAT credit on the duty paid by the domestic manufacturers has been decided by the Tribunal in their favour in the Applicant's own case [2014 (309) ELT 354 (Tri-Del)]. This order of the Tribunal has been upheld by the Hon'ble Rajasthan High Court as reported in 2019 (366) E.L.T. A23 (Raj.). Further, the Board, vide Circular No. 1063/2/2018-CX dated 16.02.2018, has clarified that the aforesaid order of Hon'ble Rajasthan High Court has been accepted by the department. Therefore, there is no manner of doubt that the genesis of the dispute viz. the incorrect availment of CENVAT credit does not exist anymore. As such, consequential action taken to reject the rebate or to demand the rebate already sanctioned cannot be sustained.

(ii) The Government observes that in case the issue of availment of CENVAT credit had been decided against the Applicants herein, the credit availed would have been recovered from the Applicants alongwith applicable interest. In such a case, the recovery of rebate already paid would amount to recovery of the very same amount twice – once, as incorrectly availed CENVAT and, secondly, as recovery of

rebate of duty paid from the incorrectly availed CENVAT credit. In other words, the recovery of rebate would have resulted in double recovery of the incorrectly availed CENVAT.

6. In view of the above, the Revision Applications are allowed and the impugned OIA dated 27.10.2021 is set aside.



(Sandeep Prakash)

Additional Secretary to the Government of India

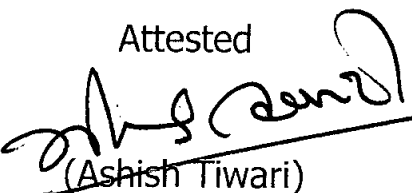
M/s Balkrishna Industries Ltd.,
A-300-303 & E-308-313, RIICO Industrial Area,
Chopanki, Alwar, Rajasthan-301019.

G.O.I. Order No. 13-22/22-CX dated 19-5-2022

Copy to:-

1. The Commissioner (Appeals), Central Excise & CGST, NCRB, Statue Circle, Jaipur-302 005.
2. The Commissioner of CGST, Alwar, Block "A", Surya Nagar, Alwar-301 001.
3. PA to AS(Revision Application)
4. ~~Guard File~~
5. Spare Copy

Attested



(Ashish Tiwari)
Assistant Commissioner(RA)