

**SPEED POST**



F. No. 198/73-76/2018-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...11/7/22

Order No. 25-28 /2022-CX dated 11-07-2022 of the Government of India, passed by Sh. 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 Order-in-Appeal No. 144-147(SRM)CE/JDR/2017 dated 13.10.2017 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.
- Applicants : The Commissioner of CGST & Central Excise, Udaipur.
- Respondent : M/s. Shree Rajasthan Syntex Limited, Dungarpur, Rajasthan.

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**ORDER**

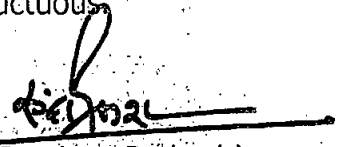
Revision Application Nos. 198/73-76/2018-RA dated 29.01.2018 have been filed by the Commissioner CGST and Central Excise, Udaipur (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 144-147(SRM)/CE/JDR/2017 dated 13.10.2017, passed by the Commissioner (Appeals), CGST and Central Excise, Jodhpur in the case of Appeal Nos. APPL/JPR-I/CE/UD/627/XI/16, APPL/JPR-I/-CE/UD/625/XI/16, APPL/JPR-I/-CE/UD/626/XI/16 and APPL/JPR-I/-CE/UD/624/XI/16, filed by Sh. Rajasthan Syntex Ltd., Dungarpur (hereinafter referred to as the Respondent). The Commissioner (Appeals), vide the impugned Order-in-Appeal dated 13.10.2017, has partly allowed the appeals filed by the Respondent herein against the Orders-in-Original No. 517-520/2016, 521-524/2016, 522-528/2016 & 529-532/2016, all dated 21.09.2016, passed by the Assistant Commissioner, Jodhpur Division.

2. Brief facts of the case are that the Respondents are engaged in manufacture of Yarn falling under Chapter 55 of the Central Excise Tariff Act, 1985. They had filed several rebate claims in respect of the Central Excise Duty paid on goods exported as well as rebate of duty paid on excisable material used in the manufacture of exported goods, under Rule 18 of the Central Excise Rule, 2002. The original authority, vide the aforesaid Orders-in-Original allowed the rebate in cash after deduction of freight amount from factory to port of export and other expenses from the FOB value and re-credited the balance amount in the CENVAT credit account. The original authority also restricted the rebate amount on inputs used by deducting the amount equal to duty on account of waste generated from the raw material used in exported goods by considering that Central Excise duty on the wastage quantity is liable to be deducted from the admissible rebate amount. The Commissioner (Appeals), vide the impugned Orders-in-Appeal, upheld the contention of the Respondent herein, in respect of rebate of duty, on the basis of transaction value and held that for the purposes of Section 4 of the Central Excise Act, 1944, transaction value is FOB value inclusive of post clearance charges considering the place of export as the place of removal. Accordingly, the Commissioner (Appeals) held that Respondent is eligible for cash refund in this respect. In respect of the restriction of rebate amount by deducting the Central Excise Duty on the waste generated, the Commissioner (Appeals) upheld the order of the original authority.

3. The Revision Application has been filed, mainly, on the grounds that the Commissioner (Appeals) has wrongly relied upon the Board Circular No. 999/6/2015-CX dated 28.02.2015 that the port of export is the place of removal since the aforesaid Circular has been issued in respect of the eligibility of CENVAT Credit; that since the assessee are assessed at value of goods at factory gate, the transaction value for export goods would also be the value at the factory gate; and, therefore, any amount paid over and above, cannot be treated as Central Excise Duty. Written reply dated 21.07.2018 has been filed on 09.08.2018 by the Respondents.
4. Personal hearing, in virtual mode, was held on 08.07.2022. Sh. Faisal Khan, AC appeared for the Applicant and reiterated the contents of RA. He stated that out of the two issues involved, the present case only relates to payment of duty on 'FOB value' basis and rebate thereof instead of 'at factory gate' basis. Sri Anubhav Ladia, CA appeared for the Respondent and reiterated the contents of the written reply dated 21.07.2018. He submitted that even though the case is covered in their favour in view of Board's Circular dated 28.02.2015, they have not taken cash refund nor are they pressing for such refund. Hence, the RA is infructuous. Sh. Faisal Khan, AC confirmed that cash refund had not been granted nor any application on this count is pending.
5. The revision applications have been filed with a delay of 05 days, which is ascribed to administrative difficulties. Delay is condoned.
6. The Government has carefully examined the matter. The issue involved in the present case is whether rebate claim in respect of duty paid on exported goods on FOB value basis should be restricted by deducting expenses incurred after the factory gate. The Commissioner (Appeals) has allowed the appeals filed by the Respondent herein, inter-alia, by observing that the Board's aforesaid Circular dated 28.02.2015 clarifies that the transaction value should be calculated after considering all expenses incurred up to the place of removal, i.e., up to the port of export. The department has challenged the reliance on this Circular of the Board. However, the Government finds that, irrespective of the merits of the case, the revision applications have become infructuous, in as much as, the rebate claim of Rs. 12,229/- allowed by the Commissioner (Appeals) to be paid in cash

is not pressed by the Respondents and they are satisfied by the re-credit thereof in the CENVAT Credit account. This position has also been affirmed by the department's representative in personal hearing. Therefore, no dispute survives for consideration and the revision applications have been rendered infructuous.

7. In view of the above, the revision applications are rejected as infructuous.



(Sandeep Prakash)

Additional Secretary to the Government of India

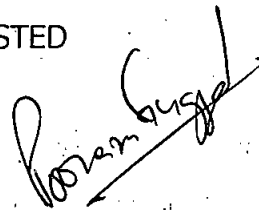
The Commissioner of Central Excise & CGST,  
142-B, Sector-11, Hiran Magri,  
Udaipur - 313 002.

G.O.I. Order No. 25-28/22-CX dated 11-07 2022

Copy to: -

1. M/s. Shree Rajasthan Syntex Limited, "SRSL House", Post Box No. 209, N.H. 8, Pulla Bhuwana Road, Udaipur- 314 001, Rajasthan.
2. The Commissioner (Appeals), Central Excise & CGST, Jodhpur, G-105, New Industrial Area, Opp. Diesel Shed, Basni, Jodhpur - 323 025.
3. P.S to A.S. (Revision Application)
4. Guard File
5. Spare Copy.

ATTESTED



(Poonam Guggal)  
Supdt. RA