

SPEED POST

F. No. 198/59/SZ/2017-RA & Others
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

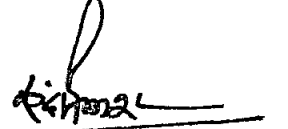
Corrigendum dated 16.03.2023 to Order No. 34-43/2023-CX Dated 02.02.2023 of the Government of India, passed by the Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

In the above-mentioned **Order dated 02.02.2023**, certain typographical errors have inadvertently crept in, which may be corrected and read as under:

1. At the header, 'F. No. 198/59/SZ/2019-RA & Others' may be read as '**F. No. 198/59/SZ/2017-RA & Others**'
2. In the **Table-I**, against **S. No. 3 and 8-10**, the following may be read:

S. No.	R.A. No(s). & Date	Applicant	Respondent	O-I-A No(s). & Date	O-I-O No(s). & Date	Rebate Amount (In Rs.)
A	B	C	D	E	F	G
3.	195/04/SZ/2019-R.A. dated 17.12.2018	M/s SJLT Spinning Mills (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CE-APP-155-2018 Dated 17.09.2018 Corrigendum dated 29.11.2018	41/2016 (R) Dated 21.11.2016 42/2016 (R) Dated 21.11.2016	2,98,423/- 17,48,432/-
8	195/249-251/SZ/2019-R.A. dated 30.07.2019	M/s SJLT Spinning (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CEX-APP-120-122-2019 Dated 05.03.2019 Corrigendum dated 30.05.2019	01/2016 (R) Dated 18.04.2016	6,78,767/-
9	195/249-251/SZ/2019-R.A. dated 30.07.2019	M/s SJLT Textiles (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CEX-APP-120-122-2019 Dated 05.03.2019 Corrigendum dated 30.05.2019	02/2016 (R) Dated 18.04.2016	2,48,060/-
10	195/249-251/SZ/2019-R.A. dated 30.07.2019	M/s SJLT Spinning Mills (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CEX-APP-120-122-2019 Dated 05.03.2019 Corrigendum dated 30.05.2019	03/2016 (R) Dated 18.04.2016	6,55,361/-

3. In the Para 8, the RA No. '198/58/2017-RA' and RA No. '195/249-257/SZ/2019-RA' may be read as '**198/59/2017-RA**' and '**195/249-251/SZ/2019-RA**', respectively.



(Sandeep Prakash)

Additional Secretary to the Government of India

1. The Commissioner of CGST & Central Excise,
No. 1 Williams Road, Cantonment,
Tiruchirapalli-620001.
2. M/s SJLT Spinning Mills (P) Ltd.,
NH-7, Namakkal-Karur Main Road,
Pillaikalathur, Paramathi (PO),
Paramathi-Velur (Taluk),
Namakkal District-637207.
3. M/s SJLT Textiles (P) Ltd.,
Mantoppu Bye-Pass Road,
Karugudi Village, Thathayanagar Pettai,
Musiri (Tk), Trichy District-621211.

Copy to:

1. The Commissioner of Central Goods & Service Tax, No. 1 Foulk's Compound, Anai Medu, Salem-636001.
2. The Commissioner of Central Excise (Appeals), Coimbatore Circuit Office @ Salem Commissionerate, No. 1 Foulk's Compound, Anai Road, Salem-636001.
3. The Commissioner (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirapally-620001.
4. Sh. V Sundararajan, CA-1/137/VS, TVS Nagar, Thevarkullam, S. N. Puram Post, Thiruthangal-626130.
5. PPS to AS (RA).
6. Guard file.
7. Spare Copy.
8. Notice Board.

ATTESTED

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Date of Issue... 02/02/23..

Order No. 34-43/2023-CX Dated 02-02-2023 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 Applications, as mentioned in Column 'B' of the 'Table-I' below, filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No(s). as mentioned in Column 'E' of the 'Table-I' below, passed by the Commissioner of Central Excise (Appeals-II), Tiruchirapally & Commissioner of CGST & Central Excise (Appeals), Coimbatore @ Salem.

Applicant : As mentioned in Column 'C' of 'Table-I', below.

Respondent : As mentioned in Column 'D' of 'Table-I', below.

TABLE-I

S. No.	R.A. No(s). & Date	Applicant	Respondent	O-I-A No(s). & Date	O-I-O No(s) & Date	Rebate Amount (in Rs.)
A	B	C	D	E	F	G
1	198/59/2017-R.A. dated 28.04.2017	Commissioner of CGST, Tiruchirapalli	M/s SJLT Textiles (P) Ltd., Tiruchirapalli	TCP-CEX-000-APP-074-016 dated 31.10.2016	108/2015-R dated 20.10.2015	4,36,352/-
2.	195/03/SZ/2019-R.A. dated 17.12.2018	M/s SJLT Spinning Mills (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CE-APP-153-2018 Dated 17.09.2018	14/2016(R) Dated 26.05.2016 15/2016(R) Dated 26.05.2016	2,83,689/- 2,77,303/-
3.	195/04/SZ/2019-	M/s SJLT Spinning	Commissioner	SLM-CE-APP-155-	41/2016 (R)	2,98,423/-

	R.A. dated 17.12.2018	Mills (P) Ltd., Namakkal.	of CGST, Salem	2018 Dated 17.09.2018	Dated 21.11.2016 42/2016 (R) Dated 21.11.2016 43/2016 (R) Dated 21.11.2016 44/2016 (R) Dated 21.11.2016	17,48,432/- 2,30,140/- 14,96,363/-
4.	195/188/SZ/2019- R.A. dated 09.05.2019	M/s SJLT Textiles Mills (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CEX-APP-100- 2019 Dated 14.02.2019	05/2018 (RF) Dated 27.03.2018	9,12,198/-
5-7	195/224- 226/SZ/2019-R.A. dated 31.05.2019	M/s SJLT Textiles Mills (P) Ltd., Namakkal.	Commissioner of CGST, Salem	SLM-CEX-APP-117- 119-2019 Dated 05.03.2019	77/2016 (R) Dated 09.03.2016 79/2016 (R) Dated 10.03.2016 80/2016 (R) Dated 14.03.2016	17,40,871/- 10,13,158/- 2,61,514/-
8-10	195/249- 251/SZ/2019-R.A. dated 30.07.2019	M/s SJLT Textiles Mills (P) Ltd., Namakkal..	Commissioner of CGST, Salem	SLM-CEX-APP-120- 122-2019 Dated 05.03.2019	01/2016 (R) Dated 18.04.2016 02/2016 (R) Dated 18.04.2016 03/2016 (R) Dated 18.04.2016	6,78,767/- 2,48,060/- 6,55,361/-

ORDER

Revision Applications, bearing Nos. as mentioned in Column 'B' of **Table-I** above, have been filed against the Orders-in-Appeal, as mentioned in **Column E** of **Table-I** above, passed by the Commissioner of Central Excise (Appeals-II), Tiruchirapalli & Commissioner of CGST & Central Excise (Appeals), Coimbatore @ Salem, as the case may be. The Commissioner (Appeals) has, vide Order-in-Appeal at **Serial No.1** in **Table-I** above, rejected the appeal filed by the department against the order of the lower authority as mentioned in **Column 'F'** of the **Table-I** above, whereas in all other cases the Commissioner (Appeals) has rejected the appeals filed by the private party, namely, M/s SJLT Spinning Mills (P) Ltd., Namakkal. The revision applications involve a common issue and are, therefore, being taken up for disposal by this common order.

2.1 Brief facts of the case are that M/s SJLT Spinning Mills Pvt. Ltd., Namakkal, filed rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT), in respect of Central Excise duties paid on the goods exported by them. The rebate claims were rejected by the original authority on the grounds that the Applicants had claimed duty drawback at higher rate, under Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and claimed rebate of duty paid on excisable goods in respect of the same goods, which resulted in double benefit. The Appeals filed by the Applicants herein have been rejected by the Commissioner (Appeals) by following the judgment of the Hon'ble Madras High Court in the case of Raghav Industries Ltd. {2016 (334) ELT 584 (Mad.)} and in the case of Kadri Mills (CBE) Ltd. vs. Union of India {2016 (334) ELT 642 (Mad.)}.

2.2 In the case at S. No. 1 of Table-I above, the rebate claim was allowed by the original authority and the departmental appeal has been rejected by the Commissioner (Appeals).

3.1 The revision applications (at S. No. 2 to 10 of Table-I above) have been filed, mainly, on the grounds that the Applicants had exported the goods on payment of Central

Excise duty and the payment was accepted through debit in Capital Goods CENVAT credit accounts; that the case of Raghav Industries (supra) does not apply in their case in as much as they had utilized the capital goods credit and not the input credit; that the judgment of Hon'ble Single Judge in the case of Raghav Industries (supra) was in appeal before the Hon'ble Division Bench; and, that, therefore, the Orders-in-Appeal cannot be sustained.

3.2 In respect of the revision application, at S. No. 1 of Table-I above, the Applicant department has submitted that the rebate is not admissible as the CENVAT credit on capital goods and drawback on higher rate have been availed and, in such a case, sanction of rebate would lead to double benefit. A written reply dated 15.08.2018 has been filed by the Respondent.

4. Personal hearing in the matter was fixed on 04.01.2023, 16.01.2023 and 01.02.2023. In the personal hearing held on 01.02.2023, in virtual mode, Sh. V. Sundarajan, CA appeared for the Applicant and requested that additional submissions emailed on 31.01.2023 may be taken on records. He stated that there is no double benefit in the matter as held by AS(RA), Mumbai in the case of M/s GTN Industries Ltd. Nagpur vide Order Dated 17.01.2023. Upon being asked, he submitted that the judgment of Hon'ble Madras High Court in the case of Kadri Mills is solely based on the earlier judgment in the case of Raghav Industries, which has been set aside. Hence judgment in Kadri Mills has no precedentiary value. Sh. Kanran K., Superintendent appeared for the department in respect of RA at S. No. 1 of Table-I above and reiterated the contents of the RA. No one appeared for the department in other cases nor any request for adjournment has been received. Hence, it is presumed that the department has nothing to add in the matter.

5.1 The RA No. 198/59/2017-RA has been filed by the department with a delay of 85 days. Delay, which is attributed to administrative exigency, is condoned.

5.2 Further, in this RA filed by the department, the issue of double benefit has been raised for the first time. It has been submitted that this ground could not be raised before the Commissioner (Appeals) and may be allowed to be raised as per incuriam at revision stage. This has been opposed by the Respondent. The Government observes that the Hon'ble Supreme Court has, in the case of Jute Corporation of India Ltd. vs. Commissioner of Income Tax {2002-TIOL-1027-SC-IT-LB}, held that an additional ground can be allowed to be raised at appellate stage if appellate authority is "*satisfied that the ground raised was bonafide and that the same could not have been raised earlier for good reasons*". In the present case, there is no doubt that the ground raised is bonafide. The question is whether the same could not have been raised earlier for good reasons. It is observed that the subject ground has been raised with reference to the judgment dated 19.02.2016 of Hon'ble Madras High Court in Raghav Industries (supra), whereas the appeal before the Commissioner (Appeals) was filed in January 2016, i.e., before the cited judgment came to be rendered by the Hon'ble High Court. Therefore, it is apparent that the matter could not have been raised at the appellate stage. As such, the Government permits this ground to be raised.

6.1 Common question involved in all these revision applications is whether rebate under Rule 18 of Central Excise Rules, 2002 can be granted when Applicant has availed CENVAT credit and has simultaneously obtained drawback at composite rate, i.e., higher rate. The Commissioner (Appeals) has correctly pointed out that the said issue is specifically covered against the Applicants herein by the judgments of the Hon'ble Madras High Court in the case of Raghav Industries (supra) and Kadri Mills (supra). It is specifically brought out by the Commissioner (Appeals) that the Kadri Mills case arose out of CENVAT credit availed on capital goods and payment of duty from such credit. It is, however, submitted that the judgment in the case of Raghav Industries has been set aside by the Hon'ble Division Bench of the Hon'ble Madras High Court and as the judgment in Kadri Mills is solely based on the earlier judgment in the case of Raghav Industries it has no precedentiary value.

6.2 The Government observes that the judgment of the Hon'ble Single Judge in Raghav Industries (supra) was challenged in Writ Appeal before the Hon'ble Madras High Court. The Writ Appeal has been decided by the Hon'ble Court vide, judgment dated 07.04.2022 {2022-TIOL-784-HC-MAD-CX}. On a careful perusal of the judgment passed by the Hon'ble Division Bench in the Writ Appeal, it is observed that the Petitioner Appellants therein pleaded before the Hon'ble High Court that in the facts of that case there was no double benefit accruing. In this view of the matter, the Hon'ble High Court *"taking note of the factual dispute arisen with regard to the availment of Central Credit by the appellants"*, has remanded the issue to the original authority for de-novo consideration. Thus, the matter has been remanded due to the factual dispute and the ratio of the earlier judgment of the Hon'ble Single Judge that simultaneous availment of rebate and higher rate of drawback is not permissible if CENVAT credit had been availed and utilized for payment of Central Excise duty, has not been disturbed. Therefore, it is incorrect to contend that the judgment in Kadri Mills (supra) has no precedentiary value.

6.3 A decision dated 17.01.2023 passed by the revisionary authority at Mumbai, in a matter relating to GTN Industries Ltd., Nagpur, has also been cited in support of their case by the Applicants herein. Without entering into the merits of the decision dated 17.01.2023, the Government observes that the decision in Kadri Mills (supra) is a decision of the Hon'ble jurisdictional High Court. Therefore, the Government is bound to respectfully follow the same.

6.4 As such, the Government does not find any infirmity in the view taken by the Commissioner (Appeals) on this count.

7. It is observed that in the case of RA at S. No. 2 of the Table-I above, the issue of limitation has also been raised as the rebate claims in the matter were filed on 18.12.2015 & 05.11.2015 whereas the exports had taken place on 25.06.2014 and 05.07.2014, respectively. Therefore, the claims were filed much beyond the limitation period of one year provided under Section 11B of the Central Excise Act, 1944. The Commissioner (Appeals) has upheld the rejection of the said claims on the basis of limitation as well by relying upon judgment of the Hon'ble Madras High Court in the case of Hyundai Motors India Ltd. {2017 (355) ELT 342 (Mad.)}. The relevant revision application is conspicuously silent on this aspect. In any case, the matter is no longer res-integra as the Hon'ble Supreme Court has, in the case of Sansera Engineering Ltd. vs. Deputy Commissioner,

Large Tax Payer Unit, Bengaluru (2022-TIOL-102-SC-CX), held that the limitation period provided under Section 11B is applicable to the cases of rebate under Rule 18 as well.

8. In view of the above, the Revision Application No. 198/58/2017-RA is allowed whereas other Revision Applications, bearing Nos. 195/03/SZ/2019-RA, 195/04/SZ/2019-RA, 195/188/SZ/2019-RA, 195/224-226/SZ/2019-RA & 195/249-257/SZ/2019-RA, are rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

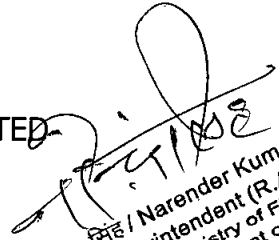
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Pillaikalathur, Paramathi (PO),
Paramathi- Velur (Taluk),
Namakkal Distt.-637207.

G.O.I. Order No. 34-43 /23-CX Dated 02-02-2023

Copy to:

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2. M/s SJLT Textiles Pvt. Ltd., Mantoppu Bye-Pass Road, Karugudi Village, Thathayanagar Pettai, Musiri (Tk), Trichy District-621211.
3. The Commissioner of Central Excise (Appeals), Coimbatore Circuit Office @ Salem Commissionerate No. 1 Foulk's Compound Anai Road, Salem-636001.
4. The Commissioner (Appeals-II), No. 1, Williams Road, Cantonment, Tiruchirapally-620001.
5. Sh. V Sundararajan, CA 1/137/VS, TVS Nagar, Thevarkullam, S.N. Puram Post, Thiruthangal-626130.
6. PA to AS (RA).
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ATTESTED


नरेंद्र कुमार सिंह / Narendar Kumar Singh
अधीक्षक / Superintendent (R.A. Unit)
वित्त-मंत्रालय / Ministry of Finance
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