

SPEED POST



F.No. 198/215/2016-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.. 20/9/22

Order No. 41/22-Cx dated 20-09-2022 of the Government of India passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.MAD-CEX-000-APP-85-16 dated 12.07.2016 by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai.

Applicant : The Commissioner of CGST & Central Excise, Madurai.

Respondents : M/s Madura Coats Pvt. Ltd., Tuticorin .

**ORDER**

A Revision Application No. 195/215/2016-RA dated 24.10.2016 has been filed by the Commissioner of Central Excise, Tirunelveli, presently Commissioner of CGST & Central Excise, Madurai, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MAD-CEX-000-APP-85-16 dated 12.07.2016 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai. The Commissioner (Appeals), vide the impugned OIA, allowed the appeal filed by M/s Madura Coats Pvt. Ltd., Tuticorin ( hereinafter referred to as the Respondent) against the Order-in-Original Nos. 22 & 23/2015 (Rebate) dated 14.07.2015, passed by the Assistant Commissioner of Central Excise , Tuticorin Division.

2. Brief facts of the case are that the Respondent were manufacturing 'staple spun polyester multiple folded yarn' falling under Chapter Heading No. 55092200 of the Central Excise Tariff Act,1985 and clearing the same at Nil rate of duty for home consumption without Cenvat credit on inputs by availing Notification No.30/2004, dated 09.07.2004 and also clearing goods for export on payment of duty under Notification No.29/2004, dated 09.07.2004 as amended under claim for rebate, availing proportionate Cenvat credit on inputs used therein, wherever applicable and also availing Cenvat credit on 'capital goods' used. They had filed two rebate claims for Rs.3,42,953/- and Rs.4,73,310/-, under Rule 18 of the Central Excise Rules, in terms of Notification No.19/2004-CE(N.T.) dated 06.09.2004, as amended , along with copies of related export documents such as ARE-1, Shipping Bill , Bill of Lading etc. After due process, the original authority had sanctioned the rebate to the Respondent herein, vide Orders-in-Original No.37/2014 (Rebate) dated 14.11.2014

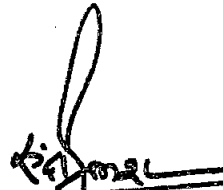
and 44/2014 (Rebate) dated 10.12.2014. These Orders-in-Original were appealed against with the Commissioner (Appeals) by the Department. In the meantime , the Respondent were issued with two show cause notices No.14/2015 (Rebate) and 15/2015 (Rebate) both dated 31.03.2015 , wherein, the Respondent were required to show cause as to why in the event of allowing of the appeals by the Commissioner(Appeals), rebate of Rs.3,42,953/- and Rs.4,73,310/- sanctioned and paid to them should not be treated as erroneous and why the same should not be recovered from them along with interest in terms of Section 11A and 11AA of the Act. Meanwhile, the Respondents also appeared before the Commissioner(Appeals) on 07.04.2015 in connection with the departmental appeals and submitted the issue in hand had been already settled by the Hon'ble tribunal and the Revisionary Authority, GOI, wherein, it was held that that assesses /exporters who are availing exemption under Notification under Notification are entitled to avail and utilize Cenvat credit on capital goods which are not exclusively used in exempted goods. Commissioner (Appeals) , however, vide his Order -in- Appeal No.027-031/2015 dated 15.04.2015 allowed the departmental appeals and directed the Respondents to pay back the sanctioned rebate along with applicable interest. On the strength of the Order -in- Appeal No.027-031/2015 dated 15.04.2015, Assistant commissioner, Tuticorin passed Orders- in- Original No. 22&23/2015(Rebate) dated 14.07.2015 , wherein, he held the amounts of Rs.3,42,953/- and Rs.4,73,310/- refunded as rebate as erroneous and ordered recovery of same along with applicable interest. Aggrieved with the said Orders- in- Original, the Respondent preferred an appeal with the Commissioner (Appeals). Commissioner (Appeals), vide the impugned OIA

dated 12.07.2016, allowed the appeal of the Respondent and rejected Orders- in- Original No. 22&23/2015(Rebate) dated 14.07.2015.

3. The revision application has been filed, mainly, on the grounds that the Respondents were not required to pay duty since input credit was not availed by them; that as per proviso to notification no.30/2004-CE, no obligation is cast on assessee to pay duty in such a situation and the exemption granted in the said notification is absolute; that the duty has been discharged from the capital goods credit account so the claim is a ploy adopted by the assessee to encash the capital goods Cenvat credit by paying duty in a situation where the assessee is not legally bound to do so. The Respondent, vide submissions dated 21.07.2022, highlighted that the Order -in- Appeal No.027-031/2015 dated 15.04.2015 has been set aside by the Government , vide Order No. 487 & 488/2020 CX(SZ)/ASRA/Mumbai dated 02.06.2020. This order dated 02.06.2020 has not been challenged by the department.
4. Personal hearing, in virtual mode, was held on 19.09.2022 which was attended by Sh. Richard, AC for the Applicant and Sh. M. Ramasubramaniam, Senior Manager (Legal) for the Respondent. Sh Richard, AC reiterated the contents of RA. Sh. M Ramasubramainiam appearing for the Respondent submitted that written submissions dated 21.07.2022 may be taken on record. He highlighted that this issue stands settled in their favour by various GOI orders in their own case, which have attained finality.
5. The Government has carefully examined the matter. It is observed that the subject RA has been filed by the department as the Commissioner (Appeals) has set

aside the OIO dated 14.07.2015, vide which the rebate claims earlier sanctioned to the Respondent herein, vide OIO dated 14.11.2014 & OIO dated 10.12.2014, were held to be erroneous and, accordingly, the demand thereof had been confirmed. The OIO dated 14.07.2014 has been passed by the original authority in pursuance of the earlier OIA dated 15.04.2015, passed by Commissioner (Appeals), vide which the OIO dated 14.11.2014 and OIO dated 10.12.2014, were set aside. It has been submitted by the Respondent that the aforesaid OIA dated 15.04.2015 has been set aside by the Government, vide earlier order dated 02.06.2020. It has been further submitted that the order dated 02.06.2020 has attained finality. As such, the very basis of the OIO dated 14.07.2015, which was set aside by the Commissioner (Appeals) has been removed. In this light, the Government finds that there is no merit in the subject RA.

6. The revision application is, accordingly, rejected.



(Sandeep Prakash)

Additional Secretary to the Government of India

To,

The Commissioner of CGST & Central Excise,  
Central Revenue Building, Bibikulam,  
Madurai-625002.

Order No. 41/22-CX dated 20-9-2022

Copy to:

1. M/s Madura Coats Pvt. Ltd., 83&88, Beach road, Tuticorin-628001.
2. Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, Lal Bahadur Shastri Marg, C.R. Building, Madurai-2.

3. Assistant Commissioner of Central Excise , Tuticorin , C-50, SIPCOT Industrial estate, Tuticorin-628006(TN).
4. PA to AS(RA)
5. Guard File.
6. Spare Copy

ATTESTED

DLR  
20.09.22

(लक्ष्मी राघवन)  
(Lakshmi Raghavan)  
अनुभाग अधिकारी / Section Officer  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi