



F. No. 195/10/2016-RA
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...14/10/22

Order No. 58/ 2022-CX dated 14-10 - 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. 58/2015/SLM/CEX dated 15.12.2015, passed by the Commissioner of Central Excise (Appeal-I), Coimbatore at Salem.

Applicant : M/s Arthanari Loom Centre (Textile) Pvt. Ltd. Salem.

Respondent : The Commissioner of CGST & Central Excise, Salem.

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ORDER

A Revision Application No. 195/10/2016-RA dated 28.01.2016 has been filed by the M/s Arthanari Loom Centre (Textile) Pvt. Ltd., Salem (hereinafter referred to as the Applicant) against the Order-in-Appeal No. 58/2015/SLM/CEX dated 15.12.2015, passed by the Commissioner of Central Excise (Appeal-I), Coimbatore at Salem. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, upheld the Order-in-Original No. 4/2015 dated 12.03.2015, passed by the Assistant Commissioner of Central Excise, Salem-I Division.

2. Brief facts of the case are that the Applicants herein are manufacturers and exporters of 100% cotton yarn dyed woven fabrics. They were availing CENVAT credit facilities in respect of capital goods from 10.06.2010 onwards and utilizing the credit to pay duty on export goods, in terms of Notification No. 29/2004-CE dated 09.07.2004. On a verification of the credit so availed, it was observed by the department that, on 10.06.2010, the Applicant herein had taken credit, at a single stroke, of a sum of Rs. 20,45,725/- on imported capital goods/spares received during the period from January, 2006 to June, 2010 and the credit had been utilized only to pay duty on export clearances. Again on 30.11.2011, the Applicants availed CENVAT credit on capital goods received during the period from 12.03.2007 to 29.04.2010 amounting to Rs. 23,91,009/-. From June 2007 onwards, the Applicants had availed full exemption from duty, in terms of Notification No. 30/2004-CE dated 09.07.2004. However, from 10.06.2010 onwards, the Applicants started availing CENVAT credit on capital goods received prior to 10.06.2010, when they were enjoying full exemption in terms of Notification No. 30/2004-CE. In the meantime, the Applicants had filed rebate claims of Rs. 4,49,557/- and Rs. 2,46,465/-, on 02.09.2010, in respect of the duty paid on the exported goods, under Rule 18 of the Central Excise Rules, 2002. These rebate claims were rejected by the original authority, vide the Orders-in-Original No. 202/2010 dated 30.10.2010 and 203/2010 dated 30.11.2010 holding that the Applicant were ineligible to avail CENVAT credit on capital goods, prior to 10.06.2010, as the capital goods were exclusively used for manufacturing of totally exempted goods and that, therefore, they cannot utilize ineligible credit taken to pay duty on exported goods and, consequently, they cannot claim rebate of the same. The Commissioner (Appeals), Salem, vide Order-in-Appeal No. 26/2011-CX and 27/2011-CX both dated 25.03.2011 decided the appeals in favour of the Applicants herein and held that they were eligible for rebate of duty paid by utilizing the CENVAT credit availed. Pursuant thereto the subject rebate claims were sanctioned and paid to the Applicants. The Revision Applications filed by the department, against the said Orders dated 25.03.2011 of the Commissioner (Appeals), were allowed by the Government, vide GOI Order No. 121-122/2013-CX dated 14.02.2013. Based on the above, the rebate claims of Rs. 4,49,557/-, Rs. 2,42,465/-, Rs. 3,33,251/-, Rs. 4,16,464/-, Rs. 4,26,867/-, Rs.60,436/-,

Rs. 4,31,624/-, Rs. 4,53,104/-, Rs. 4,86,596/-, and Rs. 1,71,050/-, already sanctioned to the Applicants appeared erroneous and, therefore, show cause notices dated 03.04.2012, 04.04.2012, 04.09.2012 and 14.09.2012 were issued to the Applicant to recover the erroneously sanctioned rebate. The original authority confirmed the demand of erroneous refund under Section 11 A of the Central Excise Act with interest under Section 11 AA, vide the Order-in-Original No. 04/2015 dated 12.03.2015. Aggrieved thereby the Applicants herein filed the appeal before the Commissioner (Appeals), which has culminated in the impugned Order-in-Appeal dated 15.12.2015.

3.1 The Revision Application has been filed, mainly, on the grounds that the entire demand is based on the simple ground that CENVAT credit availed on capital goods was not eligible as these capital goods were used exclusively for manufacture of exempted goods; that there were two types of clearances during the relevant period-one type was for home consumption by availing exemption under Notification 30/2004-CE whereas other was made for export without payment of duty which cannot be claimed as exempted goods; that in terms of Tribunal's Order in Orissa Synthetic Company Ltd. {1995 77 ELT 350 (Tribunal)}, the export goods cannot be treated as exempted goods; that the question of availing of credit for the Units availing the benefits of both Notification 29/2004-CE and 30/2004-CE has reached finality vide the Hon'ble Punjab & Haryana High Court's order in S.T. Cottex Pvt. Ltd. {2011 (268) ELT 318}; that the issues raised by them before the authorities below had not been addressed by the authorities appropriately; and that, therefore, the Order-in-Appeal should be set aside.

3.2 A written reply has been filed by the Respondent department, vide letter C. No. IV/2/106/2015-C.EX. Review dated 14.07.2016. It has been, inter-alia, brought out therein that the same issue had already been decided by the Government in favour of the department vide GOI Order No. 121-122/2013-CX dated 14.02.2013 and these are only consequential demands. Accordingly, no further additional submission is required.

4. Personal hearing in the matter was held, in virtual mode, on 07.10.2012. Sh. M.N. Bharathi, Advocate appeared for the Applicant and reiterated the contents of the RA. Upon being asked, Sh. Bharathi clarified that the earlier order of the Government, vide which the rejection of rebate claims was upheld, has been challenged by them before the Hon'ble High Court. However, there is no stay in the matter. He also requested for time to file additional submissions to update the status. No one appeared for the Respondent department nor any request for adjournment has been received. Therefore, it is presumed that the department has nothing to add in the matter. Subsequently, the learned Advocate for the Applicant, vide e-mail dated 07.10.2022, brought on record that the Writ Petition filed before the Hon'ble High Court had been rejected and a restoration application had been filed. Additional submissions have been filed by the Applicants, vide e-mail dated

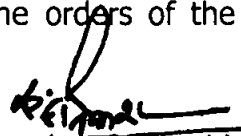
11.10.222, inter-alia, including a copy of Tribunal's Final Order Nos. 40312-40313/2022 dated 25.08.2022.

5.1 The Government has carefully examined the case. It is observed from records that this case covers demand and recovery of amounts sanctioned against 10 rebate claims filed by the Applicants herein, from time to time, as erroneous refunds. Two out of these ten claims, amounting to Rs. 4,97,357/- and Rs. 2,46,465/-, had been rejected vide the Orders-in-Original dated 30.10.2010 and 31.11.2010. However, these two claims came to be sanctioned pursuant to the Orders-in-Appeal dated 25.03.2011 passed by the Commissioner (Appeals), Salem. Thereafter, the said Orders-in-Appeal dated 25.03.2011 have been set aside by the Government, vide GOI order dated 14.02.2013. It is pursuant to this Order dated 14.02.2013 that the show cause notices issued in respect of the 10 rebate claims, including the 02 covered vide order dated 14.02.2013, have been confirmed by the lower authorities. It is also on record that the Writ Petition filed by the Applicants herein against the GOI Order dated 14.02.2013 has been rejected by the Hon'ble Madras High Court, on account of non-prosecution, on 11.03.2020, though it is claimed that a restoration application is pending before the Hon'ble High Court. Thus, presently, the GOI Order dated 14.02.2013 holds the field and, in normal course, these demands being only consequential in nature, Government should follow its earlier Order.

5.2. However, it has been brought on record that, in the present case, two proceedings were going on in parallel. One proceeding related to rejection of rebate claims as the Central Excise duty involved therein was paid from the CENVAT credit on capital goods availed, which as per department was not eligible and consequent recovery of rebate claims, wherever sanctioned, as erroneous refunds. The second proceeding was in respect of recovery of the CENVAT credit so availed, under Section 11 A of the Act *ibid*. The Applicants have brought on record that the proceedings regarding disallowing of the CENVAT credit on the capital goods availed by them and recovery thereof have culminated in the Final Order No. 40312-40313/2022 dated 25.08.2022 of the CESTAT, Chennai Bench wherein the CESTAT has allowed the appeals filed by the Applicants herein and has held that the disallowance of the CENVAT credit on capital goods was without legal or factual basis. There is no doubt that the issue of admissibility of CENVAT credit on capital goods lies in the appellate jurisdiction of the CESTAT, whereas the issue of admissibility of rebate lies in the revisionary jurisdiction of the Government. Therefore, regarding admissibility of the CENVAT credit on the capital goods, the view of CESTAT should prevail. In the present case, rebate claims have been rejected and the demands thereof, as erroneous refund, have been confirmed only on the grounds that the CENVAT credit was not admissible. Therefore, pursuant to the CESTAT Order, the genesis of the dispute itself has disappeared.

5.3 This matter can be looked at from a different perspective as well. As already brought out, there were two parallel proceedings-one regarding disallowance of CENVAT credit on capital goods and recovery thereof under Section 11 A and another regarding rejection of rebate claims as the duty was paid from the CENVAT credit allegedly inadmissible and recovery of the rebate claims wherever paid, under Section 11 A, as erroneous refunds. Therefore, in case, the CENVAT credit was to be held to be inadmissible, the same would be recovered under Section 11 A alongwith interest whereas the rebate also would be rejected and the amount, if already paid, will again be recovered under Section 11 A with interest under Section 11 AA. In other words, the amount involved in disputed CENVAT credit on capital goods will get recovered twice, once as recovery of ineligible credit and again as recovery of erroneous refunds, if both the proceedings culminate in department's favour. In case, as in the present case, the proceedings to disallow CENVAT credit and recovery thereof under Section 11 A are held to be against the department, but the rebate sanctioned is allowed to be recovered under Section 11 A alongwith interest, it would amount to a case where the genesis of the dispute has been decided in favour of the Applicant by the competent authority but the Applicant would still end up returning the CENVAT credit availed, in the colour of recovery of erroneous refund. Undoubtedly, both these situation would cause grave injustice as in the first situation the disputed amount will be recovered twice whereas in the second situation the disputed amount will be recovered as erroneous refund/rebate even though there was nothing illegal in the CENVAT credit availed. As such, the Government is of the view that the appropriate proceedings for disallowing the CENVAT credit and recovery thereof are the proceedings which are being taken pursuant to the show cause notices issued in this behalf, and wherein, as per CESTAT Final Order dated 25.08.2022, the demand does not arise. However, it is still open to the department to avail of the appellate remedies as would be available to it and pursue the matter, if it is so advised. In case the issue is finally decided in favour of the department the CENVAT credit wrongly availed would be recovered alongwith interest.

6. In view of the above, the Revision Application is allowed and the orders of the authorities below are set aside.


 (Sandeep Prakash)

Additional Secretary to the Government of India

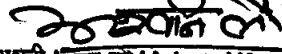
M/s Arthanari Loom Centre (Textiles),
 Pvt. Ltd. 5/127, Erumapalayam, Main Road,
 Erumapalayam Post, Salem-636015.

G.O.I. Order No. 58 /22-CX dated 14.10.2022

Copy to:

1. The Commissioner of CGST & Central Excise, No. 1 Foulks Compound, Anai Medu Salem-636001.
2. The Commissioner of Central Excise (Appeal-I) Coimbatore Circuit Office @ Salem Commissionerate.
3. Sh. M. N. Bharathi, Advocate, C/o RA Associates, Flat No. G-3, III Floor Mascot, RAS Subhiksha, Behind Deepam Hospital, Opp. Alvernia Convent, Trichy Road, Ramanathapuram, Coimbatore-641045.
4. PA to AS(RA).
5. ~~Guard file.~~
6. Spare Copy.

ATTESTED



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