F. No. 195/802/2013-R.A.
F. No. 195/240/2014-R.A.
F. No. 195/004/2015-R.A.

SPEED POST

F. No. 195/802/2013-R.A.
F. No. 195/240/2014-R.A.
F. No. 195/004/2015-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 27/10/22

Order No. 61-63/2022-CX dated 26-10-2022 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 Applications filed under section 35 EE of the Central Excise Act, 1944, against the Orders-in-Appeal No. 39/2013-SLM-CEX dated 24.05.2013, 120/2014-CE dated 23.04.2014 & 190/2014-CE dated 08.10.2014, passed by the Commissioner of Central Excise & Service Tax (Appeals), Salem.

Applicant : M/s Blue Mount Textiles, Mettupalayam.

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

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F. No. 195/802/2013-R.A.
F. No. 195/240/2014-R.A.
F. No. 195/004/2015-R.A.

ORDER

Three Revision Applications, bearing No. 195/802/2013-R.A. dated 23.08.2013, 195/240/2014-RA dated 21.07.2014 and 195/04/2015-R.A. dated 12.01.2015, have been filed by M/s Blue Mount Textiles, Mettupalayam (hereinafter referred to as the Applicant), against the Orders-in-Appeal No. 39/2013-SLM-CEX dated 24.05.2013, 120/2014-CE dated 23.04.2014 & 190/2014-CE dated 08.10.2014, all passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Salem. The Commissioner (Appeals) has, vide the impugned Orders-in-Appeal, upheld the Orders-in-Original No. 03/2013-AC(CNR) dated 08.01.2013, 96/2013-AC(CNR) dated 25.11.2013 & 03/2014 dated 10.06.2014, all passed by the Assistant Commissioner of Central Excise, Coonoor Division. As all the three revision applications involve the same issue for different periods and the Applicants and the Respondents (Commissioner of Central Excise, Salem, presently, Commissioner of CGST & Central Excise, Coimbatore) are same, these are taken up together for consideration.

2. Brief facts of the case are that the Applicants herein were a 100% Export Oriented Unit created by M/s Saradha Terry Towels Products. On successful achievement of positive Net Foreign Exchange, the Applicants were allowed to exit from the 100% EOU scheme as per the Development Commissioner's Final Order dated 22.06.2011 based on a 'No Dues Certificate' issued by the Assistant Commissioner of Central Excise, Coonoor Division, after having paid the duties of Excise and Customs on the imported/indigenous capital goods, consumables, raw materials, semi-finished goods and final products. The Unit was converted into a DTA Unit at the same premises and it continued to manufacture the same final product which it was manufacturing and exporting as a 100% EOU, i.e., 100% Cotton Terry Towels, falling under chapter 63 of the Central Excise Tariff Act, 1985, under Central Excise registration No. AADCS0657HXM006. The de-bonded capital goods, inputs, raw material, semi-finished goods and finished goods, on which duties of Central Excise and Customs (CVD) were paid by the Applicants, were transferred sou-motu by the Applicants to their DTA Unit. They took Cenvat Credit amounting to Rs.

3,19,26,831/- (CVD+ AED) on the above goods in the Cenvat Credit account of their DTA unit and also transferred unutilized Cenvat Credit amounting to Rs. 41,03,014/- (inclusive of cesses) of input services availed by them as 100% EOU to the Cenvat Credit account of their DTA unit. In addition, they also took Capital Goods credit amounting to Rs. 63,32,532/- (inclusive of a credit of CVD+AED amounting to Rs. 1,16,214/- on imported machinery spares). 50% of the credit was taken during June,2011 and balance 50% of the credit was taken during April, 2012. Further, one of the sister units of the Applicant, M/s SKS Mills, Mettupalayam, which was also a 100% EOU earlier, de-bonded from EOU status and converted into a DTA unit on 25.10.2010, merged with the Applicant company during May,2013. At the time of merger, the de-bonded Cenvat Credit lying unutilized in the account of M/s SKS Mills was also transferred to the Cenvat Credit account of the Applicant. Thereafter, the Applicant filed three rebate claims, details of the relevant proceedings are as follows:

(A). First claim (RA No. 195/802/2013-RA) : The Applicant filed rebate claim of Rs. 20,49,202/-, on 07.06.2012, in respect of duty paid on export goods, under Rule 18 of Central Excise Rules, 2002. The duties were paid from the Cenvat Credit account, details of which have been mentioned above. As it appeared to the department that the credit availed by the Applicant was ineligible, the duties paid by the Applicant using such ineligible Cenvat Credit were also not found to be proper. Accordingly, the Applicants were issued with a Show Cause Notice dated 04.09.2012, proposing denial of the rebate claimed by the Applicant. The original authority, vide O-I-O No. 03/2013-AC (CNR) dated 08.01.2013, held that out of total credit of Rs. 3,82,59,366/- (Capital goods - Rs. 63,32,532/-+ inputs – Rs. 3,19,26,834/-), credit involved on the indigenously procured capital goods to the tune of Rs. 62,16,318/- was admissible in terms of Notification No. 22/2003-CE dated 31.03.2003 and the balance of Rs. 3,20,43,048 was ineligible. He also held that input service credit of Rs. 41,03,014/- transferred by the Applicant from 100% EOU was not proper and thereafter rejected the rebate claim of Rs. 20,49,202/-. Aggrieved with the O-I-O, the Applicant filed an appeal with the Commissioner (Appeals). Vide O-I-A No.39/2013-SLM-CEX dated 24.05.2013, Commissioner (Appeals) upheld the OIO by holding that neither Rule 3

nor Rule 10 of the Cenvat Credit Rules, 2004 permits availment of Cenvat Credit by a DTA Unit in respect of the excise duty and CVD paid by a 100% EOU on the inputs and capital goods procured by them under Notification no. 22/2003-CE dated 31.03.2003 and Notification No. 52/2003-Cus dated 31.03.2003 at the time of de-bonding of 100% EOU.

(B). Second claim (RA No. 195/240/2014-RA) : The Applicant filed 20 rebate claims, totally amounting to Rs. 1,58,95,330/-, during August-October 2013 in respect of duties paid on export goods, under Rule 18 of Central Excise Rules, 2002. The Applicant confirmed that they had utilized the Cenvat Credit on Capital goods for the purpose of payment of Central Excise duties at the time of export, which was available at the time of de-bonding of M/s SKS Mills from 100% EOU status. The original authority observed that, on 25.10.2010, the Applicant opted out of 100% EOU scheme and had opted for Notification no. 30/2004-CE dated 09.07.2004, which provides total exemption from payment of excise duty on the terry towels manufactured by them. After due process of law and discussing the provisions of Rule 2(d) and Rule 6(4) of the Cenvat Credit Rules, 2004, vide O-I-O No. 96/2013-AC (CNR) dated 25.11.2013, the original authority held that as the Applicant had been manufacturing exempted goods under Notification no. 30/2004-CE dated 09.07.2004, Cenvat Credit cannot be allowed on capital goods used for manufacture of exempted goods, in terms of Rule 6(4) of the Cenvat Credit Rules, 2004. Thus, Cenvat Credit availed by the Applicant on such capital goods was ineligible. He further held that payment of Central Excise duty from ineligible Cenvat Credit is not correct and, accordingly, rejected all the 20 rebate claims. Aggrieved with the O-I-O, the Applicant filed an appeal with the Commissioner (Appeals). Vide O-I-A No.120/2014-CE dated 23.04.2014, Commissioner (Appeals) upheld the OIO by holding that the Cenvat Credit availed on the capital goods when the assessee was availing full exemption was not admissible.

(C). Third claim (RA No. 195/04/2015-RA): The Applicant filed a rebate claim amounting to Rs. 1,58,550/-, on 10.03.2014, in respect of duty paid on export goods,

under Rule 18 of Central Excise Rules, 2002. The Applicant confirmed that they had utilized the Cenvat Credit on capital goods for the purpose of payment of Central Excise duties at the time of export, which was available at the time of de-bonding of M/s SKS Mills from 100% EOU status. The original authority observed that, on 25.10.2010, the Applicant had opted out of 100% scheme and opted for Notification No. 30/2004-CE dated 09.07.2004, which provides total exemption from payment of excise duty on the terry towels manufactured by them. After due process of law and discussing the provisions of Rule 2(d) and Rule 6(4) of the Cenvat Credit Rules, 2004, vide O-I-O No. 03/2014 dated 10.06.2014, the original authority held that as the Applicant had been manufacturing exempted goods under Notification No. 30/2004-CE dated 09.07.2004, Cenvat Credit cannot be allowed on capital goods used for manufacturing exempted goods, in terms of Rule 6(4) of the Cenvat Credit Rules, 2004. Thus, Cenvat Credit availed by the Applicant on such capital goods was ineligible. He further held that payment of Central Excise duty from ineligible Cenvat Credit is not correct and, accordingly, rejected the rebate claim. Aggrieved with the O-I-O, the Applicant filed an appeal with the Commissioner (Appeals). Vide O-I-A No.190/2014-CE dated 08.10.2014, the Commissioner (Appeals) upheld the OIO by holding that the Cenvat Credit availed on the capital goods when the assessee was availing full exemption was not admissible.

3. Revision Applications against the above three impugned O-I-As have been filed. First revision application against O-I-A No.39/2013-SLM-CEX dated 24.05.2013 has been filed on the grounds that there was no demand either under Section 11A of Central Excise Act,1944 or under Rule 14 of the Cenvat Credit Rules, 2004; that the genuineness of the Cenvat Credit has been questioned only at the time of granting rebate; that in terms of proviso to rule 3(1)(xi) and rule 3(7) of Cenvat Credit Rules,2004, closing balance of Cenvat Credit of a EOU could be transferred to the same DTA Unit on de-bonding because the capital goods, inputs, semi-finished goods and input services of the EOU were duly accounted for in the EOU and appropriate duty of excise has been discharged at the time of clearance by the DTA. Second and third revision applications against O-I-A No.120/2014-CE dated 23.04.2014 and O-I-

A No.190/2014-CE dated 08.10.2014, respectively, have been filed on the grounds that the Respondent seems to have operated under the misconception that M/s SKS Mills availed the exemption under Notification No. 30/2004-CE which is not correct as M/s SKS Mills was a 100% EOU and there was no need for it to avail the said exemption during its EOU period; that after M/s SKS Mills got de-bonded it was doing job work for the Applicants; that the Applicants used to send cotton to M/s SKS Mills and the cotton was converted into yarn on job work basis, which is an intermediate product for the Applicants for manufacture of cotton terry towels; that the said manufactured cotton terry towels by the Applicants were cleared for export and in DTA on payment of duty, thus, the allegation of the department that the capital goods were used exclusively in the manufacture of exempted goods is wrong. The ground raised in the first revision application, that there was no demand, either under Section 11A of Central Excise Act, 1944 or under Rule 14 of the Cenvat Credit Rules, 2004 was reiterated in the second and third revision applications too.

4. Personal hearing, in virtual mode, was held on 28.09.2022 and 19.10.2022. Shri Durairaj, Advocate appeared for the Applicant and submitted that separate proceedings for disallowing and recovering the disputed Cenvat Credit have been undertaken by the department. In those proceedings, the Commissioner, as original authority, has disallowed the credit and ordered its recovery. Their appeal is pending before CESTAT. He regretted that details in this regard could not be filed despite his undertaking in the last hearings. As a last opportunity, he requested for and was granted time to file updated status along with copy of the Order passed by the Commissioner by 21.10.2022. Shri Srinath, AC confirmed the factual position stated by Shri Durairaj, Advocate in respect of the separate proceedings for disallowing the Cenvat Credit as correct. He supported the Orders of authorities below. In pursuance of the personal hearings held on 28.09.2022 and 19.10.2022, written submissions dated 10.10.2022 and 19.10.2022 have been filed by the Applicants.

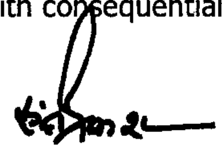
5.1 The Government has carefully examined the matter. In this case, the rebate claims filed by the Applicants herein under Rule 18 of the Central Excise Rules, 2002

have been found to be in-admissible as duty was paid on the export goods from the Cenvat Credit account wherein the credit availed was stated to be inadmissible. The stand of the department is that as the duty was paid from inadmissible Cenvat Credit, the export goods could not have been treated as duty paid and, hence, rebate claims are not admissible. It has been brought on record vide written submissions dated 19.10.2022 and in the personal hearings that separate proceedings for denial of the Cenvat Credit and for recovery of duty paid from such allegedly inadmissible credit have been undertaken by the department. In one case, the Commissioner of Central Excise, Customs & Service Tax, Coimbatore, vide Order-in-Original no. 01/2017-Commr dated 31.01.2017 has disallowed the Cenvat Credit amounting to Rs. 2,71,64,100/- and, inter-alia, confirmed the duty demand of Rs. 63,85,650/- on the finished goods cleared during the month of October, 2011 and November, 2011. In another proceeding, the Commissioner, vide Order No. 02/2018-Commr. dated 23.01.2018, has allowed Cenvat Credit of duty paid of Rs. 2,16,53,205/- on the indigenous raw material, imported raw material, input raw materials and semi-finished goods but disallowed credit of Rs. 1,02,73,626/- on the finished goods and the credit of Rs. 1,16,214/-, taken on capital goods. The recovery of Rs. 1,03,89,840/- along with interest, i.e., disallowed credit, which was utilised, has also been confirmed. The matter is stated to be pending before the CESTAT. Thus, the issue of disallowing the allegedly inadmissible credit and recovery of duty paid from such inadmissible credit along with interest is the subject matter of the proceedings pending before CESTAT. In the scheme of the Central Excise Act and the Rules made thereunder, there is no doubt that the issue of admissibility of the Cenvat Credit cannot be decided in the revision applications before the Government and the appeal in these matters lies with CESTAT, as in the present case. The issue, therefore, is whether the present proceedings which relate to disallowing the rebate claims on the same grounds that the duty has been paid on the export goods from the Cenvat Credit, which was wrongly availed, should survive.

5.2 As already brought out herein above, there are two parallel proceedings – one regarding disallowance of Cenvat Credit and recovery of duty paid therefrom under

Section 11A and another regarding rejection of rebate claims as the duty was paid from the Cenvat Credit allegedly inadmissible. Therefore, in case, the Cenvat Credit was to be held to be inadmissible, the duty paid by utilising such credit (including the duty paid on export goods) would be recovered under Section 11A along with interest, whereas the rebate also would be rejected. In other words, the duty paid from the disputed Cenvat Credit, will be recovered alongwith interest and duty paid therefrom on the export goods shall also not be allowed to be rebated, if both the proceedings culminate in department's favour. In case, the proceedings to dis-allow Cenvat Credit and recovery thereof under Section 11A are held against the department, but the rebate is not allowed, it would amount to a case where the rebate will get rejected despite the genesis of the dispute having been decided in favour of the Applicant. Undoubtedly, both these situations would cause grave injustice. The Government is of the considered opinion that the appropriate proceedings for disallowing Cenvat Credit and recovery of duty paid therefrom are the proceedings which are being undertaken in pursuance of the show cause notices issued in this behalf, which are, presently, pending before CESTAT. In case the issue is finally decided in favour of the department, the Cenvat Credit wrongly availed and the duty paid therefrom would be recovered from the Applicant along with interest. In this light, the rejection of rebate claims on the same ground will cause disadvantage twice over to the Applicant. Therefore, the Orders of the authorities below cannot be sustained.

6. In view of the above, the revision applications are allowed with consequential relief.



(Sandeep Prakash)
Additional Secretary to the Government of India

To,

M/s Blue Mount Textiles, (A unit of M/s Sharda Terry Products Ltd.)
Badrakaliamman, Koil Road, Nellithurai,
Post-Mettupalayam-641305.

Order No. 61-63/22-CX dated 26-10-2022

Copy to:

1. Commissioner of CGST & Central Excise, No. 6/7, A.T.D., Street, Race Course Road, Coimbatore – 641 018.
2. Commissioner of Customs & Central Excise (Appeals-I), No.1, Foulks Compound, Anai Medu, Salem-636001.
3. Shri S. Durairaj, Advocate, 176/84, West Sambandam Road, R.S. Puram, Coimbatore -641 002.
4. PS to AS(RA)
5. Guard File.
6. Spare Copy

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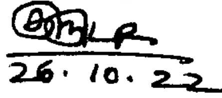

26. 10. 22

(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