

SPEED POST



F. No. 198/01/2016-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... 31/10/22

Order No. 69/2022-CX dated 31-10-2022 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 Order-in-Appeal No. SLM-CE-37 & 38-APP-2013 dated 24.05.2013, passed by the Commissioner of Central Excise (Appeals), Salem.
- Applicant : The Commissioner of CGST & Central Excise, Salem.
- Respondent : M/s. Sree DRG Vinyls Industries, Perundurai.

ORDER

A Revision Application, bearing No. 198/01/2016-R.A. dated 08.01.2016, has been filed by the Commissioner of Central Excise, Salem (hereinafter referred to as the Applicant), against the Order-in-Appeal No. SLM-CE-37 & 38-APP-2013 dated 24.05.2013, passed by the Commissioner of Central Excise (Appeals), Salem. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeals filed by M/s. Sree DRG Vinyls Industries, Perundurai (hereinafter referred to as Respondent) against Order-in-Original No. 44/2012(R)AC/Erode-I dated 31.10.2012 and No. 45/2012(R)AC/Erode-I dated 31.10.2012 passed by the Assistant Commissioner of Central Excise, Erode-I Division.

2. Brief facts of the case are that the Respondent filed rebate claims of Rs. 5,45,685/- in respect of duty paid on export goods, under Rule 18 of Central Excise Rules, 2002. Respondent is a manufacturer of PVC Leather Clothes and was availing the benefit of Notification No. 30/2004-Central Excise, dated 09.07.2004, which allows total exemption from payment of excise duty on home clearance with the condition that they shall not avail the Cenvat Credit on inputs. The Respondent also availed the benefit of Cenvat Credit on inputs for the goods meant for export and paid duty in respect of goods (PVC leather clothes) exported, in terms of Notification No. 29/2004-CE dated 09.07.2004. As it appeared to the department that the credit availed by the Applicant was inadmissible, the duties paid by the Applicant using such inadmissible Cenvat Credit were also not found to be proper. Pursuant to the Show Cause Notices issued in this behalf, the original authority rejected the rebate claims filed by the Respondents herein, vide the aforesaid Orders-in-Original dated 31.10.2012. Aggrieved, the Respondent herein filed appeals, which have been allowed by the Commissioner (Appeals).

3. Revision Application has been filed, mainly, on the grounds that the CENVAT credit shall not be allowed on such quantity of input used in or in relation to the manufacture of exempted goods, as per Rule 6(1) of CCR, 2004. Hence, the credit availed on the inputs used for manufacture of exempted goods is not correct and the duty paid from such credit cannot be allowed as rebate.

4. Personal hearing, was fixed on 22.06.2022, 06.07.2022, 21.09.2022, 12.10.2022 and 28.10.2022. In the hearing held, in virtual mode, on 28.10.2022 Shri Y. Arjunan, AC, appeared for the Applicant department and requested that written submissions dated 26.10.2022 may be taken on record. He supported the RA with the help of averments made in the written submissions. No one appeared for the Respondent nor any request for adjournment has been received. Since

sufficient opportunities have been granted to the Respondent it is presumed that they have nothing to add in the matter.

5. A condonation of delay application have been filed on the grounds that the department had earlier filed an appeal in CESTAT which has been rejected as non-maintainable, vide Final Order No. 41594/2015 dated 26.10.2015. Delay caused due to pursuing remedy in wrong forum is condoned.

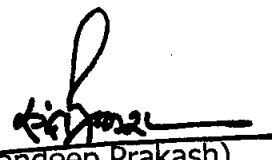
6.1 The Government has carefully examined the matter. In this case, the rebate claims filed by the Respondents herein, under Rule 18 of the Central Excise Rules, 2002, were found to be in-admissible as duty was paid on the export goods from the Cenvat Credit account wherein the credit availed was stated 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, in para 10.6 of the revisions application, that separate proceedings for denial of the Cenvat Credit and for recovery of duty paid from such allegedly inadmissible credit along with interest, have been undertaken by the department. 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 separate proceedings. 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. 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 allegedly availed wrongly, should survive.

6.2 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 have been undertaken in pursuance of the show cause notices issued in this behalf. 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.

6.3 As such, the Government does not find that this is a fit case for revision.

7. In view of the above, the revision application is rejected.


(Sandeep Prakash)

Additional Secretary to the Government of India

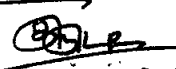
The Commissioner of CGST & Central Excise,
No.1, Foulks Compound, Anaimeedu
Salem-636001

Order No. 69 /22-CX dated 31-10-2022

Copy to:

1. The Commissioner of CGST & Central Excise (Appeals), No.1, Foulks Compound, Anaimeedu, Salem-636001.
2. M/s. Sree DRG Vinyls Industries, SIPCOT, Perundurai, Erode, Tamil Nadu-638056.
3. PS to AS(RA)
- ✓ 4. Guard File.
5. Spare Copy

ATTESTED


31.10.22
(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