F. No. 198/91/2013-RA

SPEED POST

F. No. 198/91/2013-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 01/11/22

Order No. 71/2022-CX dated 01-11-2022 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. MAD/CEX/001/APP/28-41/2013 dated 26.04.2013, passed by the Commissioner of Central Excise (Appeals), Madurai.
Applicant	:	Commissioner of CGST & Central Excise, Madurai.
Respondent	:	M/s Soundararaja Mills Ltd., Dindigul.

ORDER

A Revision Application No. 198/91/2013-R.A. dated 20.08.2013 has been filed by the Commissioner of Central Excise, Madurai, presently, Commissioner of CGST & Central Excise, Madurai (hereinafter referred to as the Applicant), against the Order-in- Appeal No. MAD/CEX/001/APP/28-41/2013 dated 26.04.2013, passed by the Commissioner (Appeals), Madurai in the matter of M/s Soundararaja Mills Ltd., Dindigul (hereinafter referred to as the Respondents). The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, rejected the appeals filed by the department, against 14 Orders-in-Original passed by the Assistant Commissioner of Central Excise, Dindigul-I Division sanctioning rebate to the Respondents herein, as per details below:

S. No.	Period	OIO No. & Date	Rebate Claimed Rs.	Rebate Sanctioned including re-credit	Amount Rejected
1.	07/2011	132/2012 dt. 13.06.2012	416767	Cheque-412802/- Re-credit 3965/-	Nil
2.	05/2011	133/2012 dt. 15.06.2012	339833	Cheque-338922/- Re-credit 911/-	Nil
3.	05/2011	134/2012 dt. 15.06.2012	337987	Cheque-337077/- Re-credit 910/-	Nil
4.	06/2011	135/2012 dt. 15.06.2012	317525	Cheque-315874/- Re-credit 1651/-	Nil
5.	06/2011	136/2012 dt. 15.06.2012	389361	Cheque-388437/- Re-credit 924/-	Nil
6.	06/2011	137/2012 dt. 15.06.2012	185637	Cheque-184158/- Re-credit 1479/-	Nil
7.	06/2011	138/2012 dt. 15.06.2012	483217	Cheque-471857/- Re-credit 11360/-	Nil
8.	06/2011	139/2012 dt. 15.06.2012	413459	Cheque-412532/- re-credit 927/-	Nil
9.	07/2011	140/2012 dt. 15.06.2012	350832	Cheque-349911/- Re-credit 921/-	Nil
10.	08/2011	141/2012 dt. 15.06.2012	344540	Cheque-343635/- Re-credit 905/-	Nil
11.	08/2011	142/2012 dt. 25.06.2012	316370	Cheque-315468/- Re-credit 902/-	Nil
12.	08/2011	143/2012 dt. 25.06.2012	350386	Cheque-348515/- re-credit 1871/-	Nil
13.	07/2011	144/2012 dt. 25.06.2012	288815	Cheque-287894/- Re-credit 921/-	Nil
14.	03/2011 & 04/2011	155/2012 dt. 25.07.2012	320732	Cheque-89221/- Re-credit 3022/- Appropriated - 60,000	168489

2. Briefly stated, the Respondent herein filed rebate claims, as above, in respect of the goods exported by them on payment of Central Excise duty. The Assistant Commissioner sanctioned the rebate claims. However, the department was aggrieved by the same and filed appeals before the Commissioner (Appeals), on the grounds that the Respondent had availed drawback at the composite rate while simultaneously availing CENVAT credit facility. Therefore, the sanction of rebate has led to a double benefit. The appeals filed by the department have been rejected by the Commissioner (Appeals).

3. The Revision Application has been filed, mainly, on the grounds that simultaneous availment of drawback at composite rate and rebate of duty paid on final products is not

admissible, in terms of Notification No. 84/2010-Cus (NT) dated 17.09.2010; that the Commissioner (Appeals) has relied upon the CBEC's Circular No. 209/3/1996-CX dated 09.05.1996 to conclude that if a manufacturer avails credit of inputs used in manufacture of export goods and claims duty drawback at composite rate there would be no double benefit, without observing that the said Circular was issued with respect to the provisions of Drawback Schedule as it existed prior to 23.10.1996. Detailed written reply has been filed by the Respondents herein vide letter dated 10.03.2014.

4. The Revision Application has been filed with a delay of about 14 days. The delay, attributed to administrative reasons, is condoned.

5. In the personal hearing held, in virtual mode, on 19.10.2022, Sh. Raghunath Gali, AC appeared for the Applicant department and supported the position that composite rate of drawback and rebate under rule 18 cannot be simultaneously availed. Sh. M. Karthikeyan, Advocate, to the contrary, submitted that both the benefits are simultaneously admissible. Hearing was concluded with directions to the department to submit a factual report regarding the CENVAT credit availment and the credit from which the duty was paid on export goods i.e. whether Cenvat credit on inputs & input services or Capital Goods or both. Sh. M. Karthikeyan, Advocate undertook to submit the present status of the judgment of Hon'ble Madras High Court in Kadri Mills {2016 (334) ELT 642}. Both parties were given one weeks time to make submissions as above. The department has filed the factual position, as per letter OC No. 347/2022 dated 25.10.2022. The Respondents have submitted the present status of Kadri Mills, vide email dated 28.10.2022.

6.1 The Government has carefully examined the matter. The issue involved in this revision application is regarding admissibility of rebate claim under Rule 18 of Central Excise Rules, 2002 when the drawback has been availed at composite rate in respect of the same exported goods. It is the contention of the Applicant department that availment of drawback at composite rate, while simultaneously availing of CENVAT credit facility, and the rebate of duty paid on exported goods would lead to a double benefit. Hence, the rebate is not admissible. To the contrary, it is the contention of the Respondent that drawback and rebate are two separate schemes wherein drawback of duty at composite rate and rebate on final product does not cause double benefit. It is the contention of the Respondents that a double benefit will accrue only if the rebate of duty is claimed in respect of inputs used in the manufacture of export products and not when rebate is in respect of the final product.

6.2 The Government finds that the subject issue is squarely covered against the Respondents' case, by two decisions of the Hon'ble Madras High Court, i.e., the jurisdictional High Court viz. in the case of Raghav Industries Ltd. vs. Union of India {2016 (334) E.L.T. 584 (Mad.)} and in the case of Kadri Mills (CBE) Ltd. vs. Union of India {2016 (334) E.L.T. 642 (Mad.)}. It has been brought on record that in appeal filed before a Division Bench of the Hon'ble Madras High Court in respect of the judgment of Hon'ble Single Judge in Raghav Industries (supra), the Division Bench has remanded the matter to the original authority {2022 (6) TMI 175- Madras High Court}. The Government has carefully perused the judgment of the Division Bench of Hon'ble Madras High Court in the

case of Raghav Industies Ltd. and finds that, in that matter, it was pleaded by the Petitioner Appellants, i.e., M/s Raghav Industries Ltd. before the Hon'ble High Court that they had availed CENVAT credit only in respect of capital goods and not in respect of inputs purchased and inputs services availed. It was further submitted that, as per Notification No. 68/2011-Cus(NT) dated 22.09.2011, the higher rate of drawback, i.e., composite rate of drawback is available when CENVAT facility has not been availed on inputs and input services and that the notification does not restrict availment of CENVAT credit on capital goods. It was pleaded on behalf of Union of India that since the appellants had availed and utilized CENVAT credit on capital goods it leads to double benefit and, hence, their claim of rebate was rightly rejected. The Hon'ble High Court, in the conspectus of these contrasting claims, remanded the matter to the original authority to factually determine with reference to the documentary evidence regarding the availment of CENVAT credit and, thereafter, review the entire process by considering Paras 6 and 15 (i) and (ii) of the Notification No. 68/2011-Cus (NT) as well as Rule 2 (a) of the Customs, Central Excise Duties and Services Tax Drawback Rules, 1995. Therefore, it is apparent that in the case of Raghav Industries the petitioners claimed that since they had availed CENVAT credit only in respect of capital goods and not in respect of inputs and input services, there was no double benefit. However, in the instant case, it has been placed on record by the department, vide Letter No. O.C. No. 347/2022 dated 25.10.2022, that the Respondents herein had availed CENVAT credit, in respect of inputs purchased by them, which was used to pay duty on the exported goods. It is further reported that the CENVAT credit on capital goods was not availed/utilised. Therefore, the judgment of the Hon'ble Division Bench in the case of Raghav Industries is of no assistance to the Respondent's case herein.

6.3 The Respondents have, vide e-mail dated 28.10.2022, informed that the Writ Appeal No. 542 of 2016 filed against the judgment in Kadri Mills (supra) has been dismissed as withdrawn, vide Order dated 05.04.2018. Hence, the judgment in Kadri Mills (supra) holds the field. Being a judgment of the jurisdictional High Court, Government is bound to follow the same. It is incorrect of the Respondents to claim that decision in Kadri Mills has no precedentiary value as it is fully based on Raghav Industries decision, in view of discussion in para 6.2 above.

6.4 In the written submissions dated 28.09.2022, filed by e-mail, the Respondents have also relied upon the judgment of the Hon'ble Rajasthan High Court in the case of Iscon Surgicals Ltd. vs. Union of India {2016 (2) TMI 1033 – Rajasthan High Court} and that of Hon'ble Supreme Court in the case of M/s Spentex Industries Ltd. vs. Commissioner of Central Excise & others {2015 (10) TMI 774- Supreme Court}. The Government finds that the Hon'ble Rajasthan High Court has decided the case of Iscon Surgicals Ltd. in the light of the Apex Court's decision in the case of M/s Spentex Industries Ltd. (supra). It is observed that the judgment in Spentex Industries is an authority on the issue that the exporter is entitled to both the rebates under Rule 18 of Central Excise Rules, 2002, i.e., both in respect of duty paid on the export goods as well as the duty paid on the inputs used in manufacture of such final products, and not one kind of rebate only. The issue involved, in the present case, on the other hand, is regarding admissibility of rebate under Rule 18 when higher rate of drawback has been availed in respect of the same final goods, under the Drawback Rules, which was not the issue before the Apex Court in

Spentex Industries. In its brief order in the case of Iscon Surgicals (supra), the Hon'ble Rajasthan High Court has not indicated the reason for following the case of Spentex Industries in respect of the issue in hand. Further, as already brought out hereinabove, the issue in hand is squarely covered by a decision of the jurisdictional High Court.

7. 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

The Commissioner CGST & Central Excise,
Central Revenue Building, No. 4,
Lal Bahadur Shastri Road, Bibikulam,
Madurai-625002.

G.O.I. Order No. 71/22-CX dated 01-11-2022

Copy to:

1. M/s Soundararaja Ltd., A Mills, Soundararaja Mills Road, Dindigul-624003.
2. The Commissioner of Central Excise (Appeals), Lal Bahadur Shashtri Marg, C.R. Building, Madurai-625002.
3. PA to AS(RA).
4. Guard file.
5. Spare Copy.

ATTESTED

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