

SPEED POST



F.No. 198/20-21/2017 -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. 21/11/22

Order No. 81-82/2022-CX dated 21-11-2022 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 Orders-in-Appeal Nos. MAD-CEX-000-APP-124 & 125-16 dated 17.10.2016, passed by the Commissioner of Central Excise (Appeals-I), Madurai.

Applicant : Commissioner of CGST & Central Excise, Madurai

Respondent : M/s Subburaaj Cotton Mill Pvt. Ltd., Rajapalayam

ORDER

Revision Applications bearing Nos. 198/20-21/2017-RA both dated 08.02.2017 have been filed by the Commissioner of Central Excise, Tirunelveli, presently, Commissioner of CGST and Central Excise, Madurai, (hereinafter referred to as the "Applicant"), against the Orders-in-Appeal Nos. MAD-CEX-000-APP-124 & 125-16 dated 17.10.2016, passed by the Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, allowed the appeals filed by M/s Subburaj Cotton Mill Private Limited, Rajapalayam (hereinafter referred to as the "Respondent"), against Orders-in-Original Nos. 14/CE/AC/2015(R) & 15/CE/AC/2015 (R), both dated 27.11.2015, passed by the Assistant Commissioner of Central Excise, Rajapalayam Division.

2. Brief facts of the case are that the Respondents herein were manufacturing and clearing '100% cotton combed grey cone yarn NE 80/1', falling under Chapter Heading No. 5205 of the Central Excise Tariff Act, 1985 and were clearing the same at 'Nil' rate of duty for home consumption (without Cenvat Credit on inputs), by availing notification no. 29/2004-CE dated 09.07.2004 and also clearing goods for export on payment of duty, under notification no. 29/2004-CE dated 09.07.2004 by availing proportionate Cenvat Credit on inputs used as well as availing Cenvat Credit on capital goods. They had filed two rebate claims for Rs. 2,45,784/- and Rs. 4,73,517/-, under Rule 18 of the Central Excise Rules, 2002 read with notification no. 19/2004-CE(NT) dated 06.09.2004. However, the original authority rejected the rebate claims on the grounds that the goods were exempted from payment of duty in terms of notification no. 30/2004-CE but the Respondents herein had volunteered to pay the duty by availing capital goods credit which is not correct as per law. The Commissioner (Appeals) allowed the appeals on the grounds that exemption under notification no. 30/2004-CE is conditional and, therefore, the Respondents herein could opt to pay duty as per notification more beneficial to them.

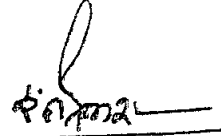
3. The revision applications have been filed, mainly, on the grounds that the proviso to notification no. 30/2004-CE prescribes that full exemption on goods specified therein is not applicable in case where Cenvat Credit is availed on inputs and, therefore, assessee taking credit of duty paid on inputs alone need to pay duty; that, in the present case, duty has been discharged from the capital goods account and, therefore, there was no obligation cast on the assessee to pay duty; and that the claim of rebate is nothing but a ploy adopted by the assessee to encash the capital goods Cenvat Credit by paying duty in situation where the assessee is not legally bound to do so.

4. Personal hearing in the matter was fixed on 21.10.2022, 07.11.2022 and 21.11.2022. No one appeared for the Applicant department on any of the dates nor any request for adjournment has been received. Shri. B. Ganesan, Consultant remained present, in virtual mode, on all dates. In the hearing held on 21.10.2022, Shri. B. Ganesan, Consultant requested that the submissions made by email dated 20.10.2022 may be taken on record wherein it has been brought out that similar matters have been dismissed in past as the department had withdrawn the revision applications. In his submission, the matter is covered on merit in their favour, as the notification No. 30/2004-CE was a conditional notification and not an absolute exemption contemplated under Section 5A (1A) of the Central Excise Act, 1944. Since sufficient opportunities have been granted to the department, it is presumed that it has nothing to add in the matter.

5. The Government has carefully examined the matter. It is observed from the orders of the original authority that, initially, as per proviso to notification no. 30/2004-CE, the exemption contained therein was not available when credit of duty paid on inputs and that on capital goods had not been availed but, subsequently, the proviso was amended to restrict the non-availment to only in respect of credit of duty paid on inputs. Since in the present case, the duty had been paid from capital goods account, the original authority took a view that the exemption under notification no. 30/2004-CE would still be available to the exported goods. However, the Government observes that the Commissioner

(Appeals) has correctly pointed out that even after the amendment made to the proviso, the notification no. 30/2004-CE was still a conditional notification and the goods were not exempted absolutely from payment of duty by virtue of the said notification. Therefore, the provisions of sub-section (1A) of Section 5A ibid are not applicable and the Respondents herein had an option to pay duty as per notification more beneficial to them. It has also been brought on record that similar revision applications filed by the department for previous periods have been withdrawn by the department and rejected as such by the Government, vide Order Nos. 661-663/2020-CX(SZ)/ASRA/Mumbai and 650-653/2020-CX(SZ)/ASRA/Mumbai, both dated 27.11.2020.

6. In view of the above, the Government does not find any merit in the subject revision applications and these are rejected accordingly.



(Sandeep Prakash)

Additional Secretary to the Government of India

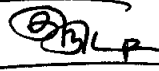
The Commissioner CGST & Central Excise,
C.R. Building, B.B. Kulam,
Madurai – 625 002.

G.O.I. Order No. 81-82/22-CX dated 21-11-2022

Copy to: -

1. M/s Subburaj Cotton Mill Pvt. Ltd., Srivilliputhur Road, Rajapalayam – 626 117.
2. The Commissioner of Central Excise (Appeals-I), Coimbatore at Madurai, C.R. Building, Lal Bahadur Shastri Marg, Madurai – 625 002, Tamil Nadu.
3. Shri B. Ganesan, Consultant (Supdt. Of Central Excise- Retd.), 75/4, ICA Colony II Street, Ramamoorthy Road, Virudhunagar – 626 001.
4. PS to AS (RA)
5. Guard File.
6. Spare Copy

ATTESTED



21.11.22

(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