

SPEED POST



F.No. 198/105/SZ/2018-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..11/01/24

Order No. 02/24-Cx dated 11-01-2024 of the Government of India passed by Ms. Shubhagata Kumar, Additional Secretary to the Government of India, under Section 35EE of the Central Excise Act, 1944.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No.MAD-CEX-000-APP-260-17 dated 01.12.2017 by the Commissioner of GST & Central Excise (Appeals), Madurai.

Applicant : The Commissioner of CGST & Central Excise, Madurai.

Respondents : M/s Madura Coats Pvt. Ltd., Madurai .

ORDER

A Revision Application No. 195/105/SZ/2018-RA dated 06.03.2018 has been filed by the Commissioner of CGST & Central Excise, Madurai, (hereinafter referred to as the Applicant) against the Order-in-Appeal No. MAD-CEX-000-APP-260-17 dated 01.12.2017 by the Commissioner of GST & Central Excise (Appeals), Madurai. The Commissioner (Appeals), vide the impugned OIA, allowed the appeal filed by M/s Madura Coats Pvt. Ltd., Madurai (hereinafter referred to as the Respondent) against the Order-in-Original No. MAD-CEX-000-ASC-01,02&03-17 dated 04.01.2017, passed by the Assistant Commissioner of Central Excise , Madurai-I Division, Madurai.

2. Brief facts of the case are that the Respondent were manufacturing 'staple spun polyester multiple folded yarn' falling under Chapter Heading No. 55092200 of the Central Excise Tariff Act,1985 and clearing the same at Nil rate of duty for home consumption without availing Cenvat credit on inputs by availing Notification No.30/2004, dated 09.07.2004 and also clearing goods for export on payment of duty under Notification No.29/2004, dated 09.07.2004 as amended under claim for rebate, availing proportionate Cenvat credit on inputs used therein, wherever applicable and also availing Cenvat credit on 'capital goods' used. They had filed three rebate claims for the goods exported and on which duty was paid as per the details tabulated below:

Sr. No.	Date of filing of rebate claim	Rebate claimed (in Rs.)	Duty paid through debit	Duty paid through debit

			entry in capital goods credit A/c RG 23C (in Rs.)	entry in inputs credit A/c RG 23A (in Rs.)
01	14.06.2016	2679843	2287106	392737
02	18.07.2016	1489950	641463	848487
03	26.08.2016	1486894	724108	762786
	TOTAL	5656687	3652677	2004010

Thus, collectively rebate in all the three claims amounting to Rs.56,56,687/- was claimed. After due process, the original authority sanctioned the rebate amounting to Rs. 20,04,010/- (being the duty paid through debit in inputs credit account) and rejected the rebate claim of Rs.36,52,677/- (being the duty paid through debit in Capital goods credit account) to the Respondent vide Order-in-Original No. MAD-CEX-000-ASC-01,02&03-17 dated 04.01.2017. In addition, the LAA also ordered that interest under Section 11BB of the CEA, 1944 on the claim of Rs. 3,90,069/- out of sanctioned rebate claim to be paid. This Order-in-Original was appealed by the Respondent. The Commissioner (Appeals) vide the impugned OIA allowed the appeal filed by the Respondent and modified the OIO to the extent that:

- (i) Sanction of rebate claim amounting to Rs.20,04,010/- was upheld.
- (ii) Rejection of rebate claim amounting to Rs. 36,52,677/- was set aside.

- (iii) Allowing of re-credit of Rs. 36,52,677/- was upheld, however, interest was to be granted on the amount eligible to be refunded in cash out of the above amount.
- (iv) Sanction of interest for refund of Rs.3,90,069/- was upheld ; similarly interest was also to be sanctioned for the remaining input credit claim of Rs. 16,02,841/-

3. The revision application has been filed, mainly, on the grounds that the Respondents were not required to pay duty since input credit was not availed by them; that as per proviso to notification no .30/2004-CE, no obligation is cast on assessee to pay duty in such a situation and the exemption granted in the said notification is absolute; that the duty has been discharged from the capital goods credit account so the claim is a ploy adopted by the assessee to encash the capital goods Cenvat credit by paying duty in a situation where the assessee is not legally bound to do so. The Respondent, vide submissions dated 28.11.2023, highlighted that the issue in hand is no longer res-integra in as much as identical issue raised with Respondent's unit at Ambasamundram (Tamil Nadu) was fully settled in favour of the Respondent by the Common order No. 487 & 488/2020 CX(SZ)/ASRA/Mumbai dated 02.06.2020. This order dated 02.06.2020 has not been challenged by the department. It has been further submitted that Applicant's earlier Revision No. 198/215/2016-RA dated 24.10.2016 filed by the Applicant against OIA No. MAD-CEX-000-APP-85-16 dated 12.07.2016 passed by the commissioner (Appeals-I), Coimbatore at Madurai on the very same issue in respect of the Respondent's unit at

Tuticorin was rejected by the Revisionary Authority at New Delhi vide its order No. 41/22-CX dated 20.09.2022 relying on the above Mumbai Revisionary authority's order dated 02.06.2020, which had attained finality.

4. Personal hearing was held on 01.12.2023 which was attended by Sh. Prakash, AC for the Applicant and Sh. M. Ramasubramaniam Muthiah, Senior Manager (Legal) for the Respondent. Sh. Prakash, AC reiterated the contents of RA. Sh. Ramasubramainiam Muthiah appearing for the Respondent submitted that written submissions dated 28.11.2023 should be taken on record. He highlighted that this issue stands settled in their favour by various GOI orders in their own case. He further stated that the matter now being res-judicata, the RA should be rejected.

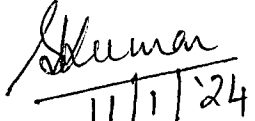
5.1 The Government has carefully examined the matter. It is observed that the subject RA has been filed by the Applicant department as the Commissioner (Appeals) has modified the OIO dated 04.01.2017 to the extent as elaborated in para 2 above. The issue involved in the instant revision application is that the duty amounting to Rs. 36,52,677/- had been discharged from the Capital goods credit account of the Respondent .The Applicant Department has claimed that the Respondent had been clearing their goods in Domestic tariff area duty free by availing exemption under Notification No.30/2004-CE dated 09.07.2004 and as per proviso to Notification No. 30/2004- CE, no obligation was cast on the Respondent to pay duty in respect of goods exported. It has been further claimed that the exemption granted in the said Notification was absolute; hence, the LAA rightly

rejected the claim of rebate of this amount. The Government finds that the departmental Applicant's contention is that the Respondent has paid duty in spite of being eligible for the benefit of Notification No. 30/2004-CE with the intent to encash the Cenvat Credit availed on Capital goods. Thus, the primary contention of the Applicant department is that if an assessee avails the benefit of Notification No.30/2004-CE dated 09.07.2004, it cannot simultaneously avail the benefit of Notification No. 29/2004- CE dated 09.07.2004 for paying duty on goods exported.

5.2 It is observed that the issue involved in the instant revision application has been decided by the Hon'ble High Court of Gujarat in the case of Arvind Ltd. Vs UOI {2014 (300) E.L.T. 481 (Guj.)} It is also observed that the Special Leave petition filed by the department against the said judgment of Hon'ble High Court(supra) has been dismissed by the Hon'ble Apex Court as reported vide {2017 (352) E.L.T. A21 (SC)}. Further, Central Board of Excise & Customs vide circular No.845/03/06-CX dated 01.02.2007 had clarified that both the notifications can be availed simultaneously. It has rightly been pointed out by the Respondent in the instant revision application that the issues raised and contested by the Applicant department in the instant revision application have fully settled in their favor in terms of GOI orders 487 & 488/2020 CX (SZ)/ASRA/Mumbai dated 02.06.2020 and 41/22-CX dated 20.09.2022 by relying on the judgment of Hon'ble High Court of Gujarat (supra) and those decisions of GOI have attained finality.

6. In light of the above, the Government finds that there is no merit in the subject Revision Application.

7. The revision application is, accordingly, rejected.


11/11/24
(Shubhagata Kumar)

Additional Secretary to the Government of India

To,

The Commissioner of CGST & Central Excise,

Central Revenue Building, Bibikulam,

Madurai-625002.

Order No. 02/24-CX dated 11-01-2024

Copy to:

1. M/s Madura Coats Pvt. Ltd., P.B. No-35, New Jail Road, Madurai-625016
2. Commissioner of Central Goods & Service Tax (Appeals), Coimbatore 6/7 A.T.D.
Street, Race Course Road, Coimbatore-641018.
3. PPS to AS(RA)
4. Guard File.
5. Spare Copy
6. Notice Board

ATTESTED



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