

SPEED POST



F.No. 195/820-840/2009-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 25/8/21.

Order No. 185-205/2021-CX dated 24-8-2021 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 Nos. 551-571/CE/App/CHD-II(JK)/2009 dated 08.09.2009 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh-II.

Applicants : M/s Chenab Textile Mills, Kathua (J&K).

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

ORDER

Twenty-One revision applications, bearing nos. 195/820-840/2009-R.A., all dated 07.12.2009, have been filed by M/s Chenab Textile Mills, Kathua, (J&K) (hereinafter referred to as the Applicants) against the Orders-in-Appeal Nos. 551-571/CE/Apl/CHD-II(JK)/2009 dated 08.09.2009 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh-II whereby the Commissioner (Appeals) has rejected the appeals filed by the Applicants herein against the Orders-in-Original passed by the Assistant Commissioner, Central Excise Division, Jammu, rejecting their rebate claims.

2. The brief facts leading upto the present proceedings are that the Applicants were engaged in the manufacture of M.M. Fabrics, Cotton Yarn, Polyester Cotton Yarn etc. classifiable under Chapter 52, 54 and 55 of the Central Excise Tariff Act, 1985. The Applicants were availing exemption under Notification No. 29/2004-CE and Notification No. 30/2004-CE both dated 09.07.2004 simultaneously. Notification No. 29/2004-CE granted partial exemption from Central Excise duty on the final product and Notification No. 30/2004-CE granted full exemption from the Central Excise duty on the final product subject to the condition that the Cenvat Credit could not be availed on various inputs used in the exempted product. Applicants exported their final product on payment of Central Excise duty as per Notification No. 29/2004-CE and claimed the rebate under Rule 18 of the Central Excise Rules, 2002. The rebate claims, totally amounting to Rs. 41,03,050/-, were rejected by the original authority, vide separate orders dated 15.10.2018 & 21.10.2018, on the grounds that the benefits of Notification No. 29/2004-CE and Notification No. 30/2004-CE could not have been availed simultaneously. Since the Applicants were clearing goods in DTA without payment of duty by availing the benefits of Notification No. 30/2004-CE, affecting export clearances by paying duty as per the Notification No. 29/2004-CE was intended to avail extra benefits. In the appeals filed by the Applicants herein, the Commissioner (Appeals) held that as per

clarification issued by the Board vide Circular No. 795/28/2004-CX dated 28.07.2004, both the said notifications were independent notifications and there was no restriction on availing the benefits thereof simultaneously. Hence, the simultaneous availment of the said notifications could not be faulted but the same could be done only by maintaining separate accounts for the goods under both the Notifications and in the case the same has not been maintained, the credit taken on inputs used in the manufacture of said goods under Notification No. 30/2004 has to be reversed before utilisation. Since the Applicants had not reversed the Cenvat credit taken on the inputs available in their final products cleared under the exemption notification, they would be ineligible to avail the said exemption. As such, the orders of the original authority were upheld in appeal to the above extent.

3. The revision applications have been filed, mainly, on the ground that from 01.05.2006, the Applicants stopped availing Cenvat credit on the inputs used in the manufacture of their final product and started clearing their final products in the domestic market without payment of Central Excise duty; that in respect of export they continued to work under Notification No. 29/2004-CE and consequently were clearing their shipments on payment of excise duty by debiting the duty from Cenvat Credit Account which was accumulated from April, 2006; that the Board vide Circular No. 845/3/2007-CX dated 01.02.2007 clarified that there can be practical difficulties in maintaining separate accounts of inputs used for dutiable final products under Notification No. 29/2004-CE and final products exempted under Notification No. 30/2004-CE and, therefore, considering the practical difficulties, the textile manufacturers should not take credit initially and instead take proportionate credit on inputs used in the manufacture of finished goods; that they were following instructions dated 01.02.2007 and did not avail the Cenvat credit of inputs and instead claimed Cenvat Credit only at the end of the month based on consumption of inputs used in the manufacture of finished goods cleared under Notification No. 29/2004-CE; that on the face of respective ARE-1s, it is

specifically stated the goods were cleared without availing Cenvat credit; and that the Commissioner (Appeals) has failed to take into account instructions dated 01.02.2007. Written submissions dated 12.04.2021 and 23.08.2021 have also been filed by the Applicants wherein it is specifically brought out that, earlier, the Applicant's own case, the Government has remanded the matter to the adjudicating authority as per Order No. 1486/2012-CX dated 10.10.2012 reported in {2013 (290) ELT 145 (GOI)}.

4. Personal hearing, was held on 23.08.2021. Sh. S.C. Kamra, Advocate appeared for the Applicants. He submitted that the Board had vide Circular No. 795/28/2004-CX dated 28.07.2004 clarified that there was no restriction on availing benefits of notifications 29/2004-CE & 30/2004-CE, simultaneously. However, the manufacturer should maintain separate books of accounts for goods availing of notification no. 29/2004-CE and for goods availing of notification no. 30/2004-CE. Subsequently, vide Circular No. 845/3/2007-CX dated 01.02.2007, the Board clarified that it may not be practically possible to maintain separate accounts and in such cases, in order to facilitate simultaneous availment, the manufacturers may not take credit initially and instead take proportionate credit in respect of goods cleared on payment of duty at the end of the month. Sh. Kamra stated that the lower authorities have failed to take notice of Circular dated 01.02.2007, which the Applicants have followed. Hence, the matter may be remanded. No one appeared for the respondent department nor any request for adjournment has been received. Therefore, the matter is taken up for disposal based on records.

5. The Government has carefully examined the matter. It is observed that the Commissioner (Appeals) has held that the benefits of Notification Nos. 29/2004-CE & 30/2004-CE can be availed simultaneously but has rejected the appeal of the Applicants herein on the grounds that the Applicants did not reverse the Cenvat credit taken on the inputs used in their final products cleared under the exempted notification and that the Applicants had failed to substantiate their rebate claims by proving that the goods exported

were manufactured out of the goods on which Cenvat credit had been availed. It is further observed that this aspect of availment/non-availment of the Cenvat credit has not been factually determined either in the order of the original authority or that of the Commissioner (Appeals). As already brought out hereinabove, in terms of Board's Circular No. 845/3/2007-CX dated 01.02.2007, the manufacturers can avail the benefits of the said notifications simultaneously provided they did not take the Cenvat credit initially and instead took only proportionate credit on inputs used in the manufacture of finished goods cleared on payment of duty, at the end of the month. It is apparent from the Orders of the Commissioner (Appeals) and the original authority that the case of the Applicants herein has not been decided after factual verification. As such, in the interest of justice, the matter merits to be remanded to the original authority for de-novo examination and decision based on factual verification in respect of compliance with the Board's Circular dated 01.02.2007.

9. In view of the above, the orders of the lower authorities are set aside and the revision applications are allowed by way of remand to the original authority, with the directions as above.


 (Sandeep Prakash)

Additional Secretary to the Government of India

M/s. Chenab Textile Mills, Kathua,
 Jammu & Kashmir, Kathua – 184 102.

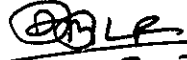
G.O.I. Order No. 185-205/21-CX dated 24-8-2021

Copy to: -

1. The Commissioner of CGST & Central Excise, Jammu, Ob-32, Rail Head Complex, Bahu Plaza, Jammu – 180 012.
2. The Commissioner (Appeals), Customs & Central Excise, Chandigarh-II, C.R. Building, Plot No. 19, Sector-17C, Chandigarh – 160 017.

3. Sh. S.C. Kamra, Advocate, B-2/20, (Basement) Safdarjung Enclave, New Delhi - 110029.
4. P.S. to A.S. (Revision Application).
5. Guard File.
6. Spare Copy.

ATTESTED


24.08.2021

(लक्ष्मी राघवन)
(LAKSHMI RAGHAVAN)
अनुभाग अधिकारी / Section Officer
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi