

REGISTERED
SPEED POST



195/795/2010-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... 27/8/18...

ORDER NO. 524/18-CX dated 4-9-2018 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P. Sharma, Additional Secretary to the Government of
India under section 35EE of Central Excise Act, 1944.

SUBJECT : Revision Application filed under Section 35EE of
Central Excise Act, 1944, against the Order-in-Appeal
No. 277(CB)CE/JPR-II/2010 dated 29.06.2010, passed
by the Commissioner of Central Excise (Appeals),
Jaipur,.

APPLICANT : M/s. RSWM Ltd

RESPONDENT : The Commissioner of Customs & Central Excise,
Jaipur-II

ORDER

A Revision Application No. 195/795/2010-RA has been filed by M/s RSWM Ltd., Udaipur, Rajasthan, (hereinafter referred to as the applicant) against Order-in-Appeal No. 277(CB)CE/JPR-II/2010 dated 29.06.2010, passed by the Commissioner of Central Excise (Appeals), Jaipur, whereby the order of the original adjudicating authority rejecting the rebate claims of the applicant has been upheld.

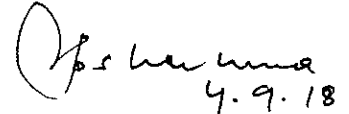
2. Brief facts leading to the filing of the Revision Application are that the applicant had filed rebate claims amounting to Rs.37,35,125/- which were rejected by the original adjudicating authority for the reason that the applicant had already claimed composite duty drawback of Customs, Central Excise and Service Tax component as mentioned in Column-A of the Drawback Schedule and, therefore, they could not avail rebate of duty under Notification No. 19/2004-Ce(N.T.) dated 06.09.2004 simultaneously in respect of the same exports of goods as it would be double benefit for the same export. The applicant's appeal filed before the Commissioner (Appeals) against the Order-in-Original was also rejected vide aforementioned Order-in-Appeal and the present revision application has been filed mainly on the ground that drawback of duty in respect of the inputs used in the manufacturing of exported goods and rebate of duty against the Central Excise duty paid on the finished exported goods are two separate incentives granted by the Government and their availment cannot be termed as double benefit as held by the lower authorities.

3. Personal hearing was held on 17.07.2018 and Sh. Keshav Maloo, CA, appeared for personal hearing on behalf of the applicant who reiterated the grounds of revision already stated in their revision application. He also placed reliance on the Supreme Court's decision in the case of Spentex Industries Ltd. Vs Union of India 2015(324)ELT686(SC) to emphasise that different benefits given under different schemes can be availed simultaneously.

4. The Government has examined the matter and it is observed that the Commissioner (Appeals) has already considered the issue involved in the present revision application in details in his Order-in-Appeal and rejected the applicant's appeal for the reasons that the applicant had availed cenvat credit in respect of inputs as well as drawback of duty in violation of conditions no. 7(e) and 7 (f)) of Notification 68/2007-Cus(NT) dated 04.10.2012, Rule 3 & 12(ii) of Drawback Rules, 1995 and allowing rebate of duty in addition to drawback of duty will amount to double benefit which is not permissible under the law. The applicant has also not denied these facts and has only averred that rebate of duty and drawback of duty are different incentives. Thus the Central issue is whether rebate of duty on exported goods can be granted even when the exporter had already availed composite drawback of duty. The Government finds that this issue has already been considered by the Hon'ble Madras High court of Madras in the case of Raghav Industries Ltd. Vs Union of India {2015(334)E.L.T.584 (Mad.)} and it has been clearly held that availment of drawback of duty as well as rebate of duty on the exported goods will amount to double benefit and, therefore, can not be availed simultaneously. Further it is also held that the apex court's judgement in the case of M/s Spantex Industries Ltd vs Union of India {2015(324)E.L.T.686(S.C.)} is not applicable in such case because the issue involved in the case of M/s Spantex Industries was totally different. Apparently this decision of the Madras High Court was not challenged by the Raghav Industries also before the Division Bench of Madras High Court and the applicant has also not cited any other decision of any other High Court or the Supreme Court contrary to the above mentioned decision of the Madras High Court. Instead the decision in Raghav Industries Ltd has been followed by Madras High Court subsequently in other case of Kadri Mills(CBE)Ltd. Vs Union of India {2016(334)E.L.T.642(Mad.)}. Earlier even the Government in its order No. 1237/2011-CX dated 21.09.2011 in the case of Sabre International Limited vs CCE, Noida, reported as 2012(280)ELT 575(GOI), has held that allowing drawback on both Customs & Central Excise portion and rebate of duty on final product will amount to double benefit. The Government has also held the same

view recently in its Order No. 4394-97/18-Cx dated 13.07.2018 in the case of M/s Anshupati Textiles. Hence, considering the above decisions of the Government and the High Court, the Government does not find any fault in the order of Commissioner (Appeals).

5. Accordingly, the Revision Application is rejected.


4.9.18

(R. P. Sharma)

Additional Secretary to the Government of India

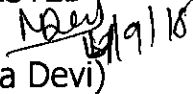
M/s. RSWM Ltd., Unit Rishabdev,
PO Rishabdev, District- Udaipur,
Rajasthan -313802

ORDER NO 524/18CX dated 4-9-2018

Copy to:-

1. The Commissioner of Central Excise, Jaipur-II, NCR Building, C-Scheme, Jaipur 302005
2. The Commissioner of Central Excise(Appeals), NCR Building, C-Scheme, Jaipur 302005
3. The Assistant Commissioner of Central Excise and service tax, 142 B, Sector 11, Hiran Magri, Udaipur 2483648
4. Mr. Keshav Maloo, CA, 238, 2nd floor, Anand Plaza, Near Ayad Bridge, Udaipur, Rajasthan
5. P.S. to A.S.
- ✓ 6. Guard File
7. Spare Copy

ATTESTED


(Nirmla Devi)

Section Officer(R.A. Unit)