REGISTERED
SPEED POST

195/106-126/2018-RA
195/57/2018-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 13/11/18.

ORDER NO. 588-609/18-Cx dated 12-11-2018 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 Applications filed under Section 35EE of Central Excise Act, 1944, against the Orders-in-Appeal No. CHD-EXCUS-001-APP-477-497-17-18 dated 27.02.2018 and CHD-EXCUS-001-APP-209-237-17-18 dated 29.12.2017, passed by the Commissioner of Goods & Service Tax (Appeals), Chandigarh
APPLICANT	:	M/s. Vardhman Spinning Mills (unit of Vardhman textiles ltd.)
RESPONDENT	:	The Commissioner of Goods & Service Tax, Chandigarh

ORDER

Revision Applications No. 195/106-126/2018-RA and 195/57/2018- RA have been filed by M/s Vardhman Spinning Mills (A Unit of Vardhman Textiles Ltd), (hereinafter referred to as the applicant) against the Orders-in-Appeal No. CHD-EXCUS-001-APP-477-497-17-18 dated 27.02.2018 and CHD-EXCUS-001-APP-209-237-17-18 dated 29.12.2017, passed by the Commissioner of Central Excise & Service Tax (Appeals), Chandigarh, whereby the orders of the original adjudicating authority rejecting the rebate claims of the applicant have been upheld.

2. Brief facts leading to the filing of the Revision Applications are that the applicant had filed rebate claims 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 appeals filed before the Commissioner (Appeals) against the Orders-in-Original was also rejected vide aforementioned Orders-in-Appeal and the present revision applications have 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 12.09.2018 and Sh. Sanjay Malhotra, Company Secretary, and Sh. Rajesh Chopra, Sr. Vice President, appeared for personal hearing on behalf of the applicant who reiterated the grounds of revision already stated in their revision applications. They also placed reliance on

the Rajasthan High Court's decision in the case of M/s Iscon Surgicals Ltd vs UOI 2016(2)TMI1033 wherein it is held that rebate of duty paid on exported goods and inputs used in the exported goods is admissible simultaneously as already held by the Apex Court in the case of M/s Spentex Industries Ltd. Vs Union of India, 2015(324)ELT686(SC).

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 applications in details in their Orders-in-Appeal and rejected the applicant's appeals 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. 10 of Notification 110/2015-Cus(NT) dated 16.11.2015, 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. The issue involved in the M/s Spantex Industries case was related to simultaneous availemnt of rebate on inputs and rebate of duty on the final exported product. Whereas in the instant case the issue is of simultaneous availment of full drawback of duty and rebate of duty on final exported products. Apparently this

decision of the Madras High Court was not challenged by the Raghav Industries also before the Division Bench of Madras High Court. Subsequently the above decision in Raghav Industries Ltd has been followed by Madras High Court in the case of Kadri Mills(CBE)Ltd. Vs Union of India {2016(334)E.L.T.642(Mad.)}. Even earlier 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 and in Order No. 195/795/2010 dated 04.09.2018 in the case of M/s RSWM. The applicant has placed reliance of Rajsthan High Court decision in the case of M/s Iscon Surgicals as mentioned in Para 3 above wherein it is briefly held as follows:

> "3. Before us, the argument advanced by learned counsel is that Rule 18 of the Central Excise Rules, 2002, on which the impugned action as well as the impugned order is based has already been interpreted by Hon'ble Supreme Court of India in M/s Spantex Industries Ltd. vs Commissioner of Central Excise and as per the view taken, the exporters are entitled to both the rebates under Rule 18 and not one kind of rebate only.
>
> 4. Having considered the facts, we are of the opinion that the issue involved in the instant petition for writ is no more res integra in light of the law laid down by Hon'ble Apex Court in the case of M/s Spantex Industries Ltd. (Supra).
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> 5. Accordingly, the writ petition is allowed by relying upon the judgement above. The order passed by the revisionary authority dated 23.07.2012 is hereby quashed. The petitioner is declared entitled to have rebate as per Rule 18 ibid."

From the above observations of Hon'ble Rajsthan High Court, it is evident that entire matter has been decided in reference to Supreme Court's decision in

the case of M/s Spantex Industries holding that the exporter are entitled to both the rebate under Rule 18 and not one kind of rebate only. Even in concluding Para 5 the petitioner is declared entitled to have rebate as per Rule 18 ibid which only speaks regarding rebate of duty in respect of inputs used in the exported goods and the rebate of duty paid on the exported goods. Thus, the Hon'ble Rajsthan High Court has not considered the main issue whether rebate of duty in respect of exported goods as well as drawback of duty can be availed simultaneously. Further no reference is made to the above referred two decisions of the Madras High Court wherein it is categorically held that rebate of duty and drawback of duty can not be availed simultaneously. Therefore, it is felt that while the Hon'ble High Court of Rajsthan has allowed the Writ Petition of Iscon Surgicals Ltd in the aforesaid order, the legal issue whether rebate of duty and drawback of duty can be availed simultaneously has not been decided by writing even a single line and accordingly it can not be followed as a precedent on the issue. On the other hand, the Madras High Court in the above two decision has clearly held that above two benefits can not be availed simultaneously and these decisions have not been apparently reversed by any superior court till now. Therefore, these decisions are more relevant in the present proceeding. Hence, considering the above decisions of the Government and the Madras High Court, the Government does not find any fault in the orders of Commissioner (Appeals).

5. Accordingly, the Revision Applications are rejected.

12.11.18

(R. P. Sharma)
Additional Secretary to the Government of India

M/s. Vardman Spinning Mills (Unit of Vardhman Textiles Ltd),
Sai Road,
Baddi, District Solan
Himachal Pradesh.

588-609/18-La
ORDER NO. CX dated 12-1-2018

Copy to:-

1. The Commissioner of Goods & Service Tax, Chandigarh, C.R. Building, Plot No. 19 Sector 17 C, Chandigarh.
2. The Commissioner of Goods & Service Tax (Appeals), Chandigarh, C.R. Building, Plot No. 19 Sector 17 C, Chandigarh
3. The Assistant Commissioner of Central Excise, SCO 47-51, Fauji Parisar, Sai Road, Baddi, Himachal Pradesh.
4. Mr. Rupinder Singh, Advocate, BSM Legal, Q-6, Hauz Khas Enclave, First Floor, New Delhi 110016
5. P.S. to A.S.
6. Guard File
7. Spare Copy

ATTESTED
12-1-18
(Nirmla Devi)
Section Officer(R.A. Unit)