

RESERVED ON: 16.02.2016
DELIVERED ON: 19.02.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.1226 of 2016

M/s Raghav Industries Ltd.,
rep by its Vice President,
T.S.No.7, Kattipalayam,
Elanagar Post,
Nammakkal Main Road - 637 212
Thiruchengode
Tamil Nadu Petitioner

vs

1. Union of India,
rep by its Joint Secretary,
Finance Department,
14, HUDCO Vishala Building,
B-wing,
6th floor,
Bhikaji Cama Place,
New Delhi - 110 066

2. The Commissioner of Central Excise (Appeals),
No.1, Foulks Compound,
Anaimeadu,
Salem 636 001

3. Commissioner of Central Excise,
No.1, Foulks Compound,
Anaimeadu,
Salem - 636 001

4. Assistant Commissioner of Central Excise,
Erode Division II
Erode Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order No.51/2015-CX dated 24.08.2015, passed by the first respondent and quash the same.

For petitioner : Mr.K.S.
For respondents: Mr.V. Sundareswaran
Standing Counsel

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records relating to the order No.51/2015-CX dated 24.08.2015, passed by the first respondent and quash the same.

2. It is the case of the petitioner that they are manufacturers of synthetic and blended textile yarn made out of raw materials, viz., duty paid polyester staple fiber or polyester viscose staple fiber. The petitioner utilised the said duty paid inputs without availing the benefit of cenvat credit of the duty paid on the materials, as available under the CENVAT Credit Rules, 2004. The petitioners exported finished goods viz., yarn to various countries on payment of excise duty on yarn. For paying the excise duty on the goods exported, the petitioner utilises the credit of duty paid on the capital goods used in the manufacture of such yarn.

3. According to the petitioner, the Government of India has from time to time announced various schemes, enabling the manufacturers to export excisable goods manufactured by them without incurring the duty incidence, either on the inputs or on the finished goods. Thus, a manufacturer can either export the finished product without payment of duty, or if he exports the same on payment of duty, he can claim rebate or refund of the duty, paid on the finished goods exported. If the manufacturer however uses raw materials on which duty was paid and if no credit of the same was availed, he can apply for rebate or refund of the duty paid on such raw materials used.

4. Further, according to the petitioner, Rule 18 of the Central Excise Rules 2002 provides for rebate of duty paid on the excisable goods exported. The said Rule not only provides for rebate of duty paid on the exported goods, but also provides for rebate of duty paid on the materials used, in the manufacture of export goods. According to the petitioners, they did not claim for any refund of excise duty paid on the raw material viz., polyester staple fiber and viscos staple fiber used in the manufacture of the exported goods.

5. The Government of India announced All Industry Rates Drawback on goods exported from India. The All Industry Rates Drawback compensate the exporters for the incidence of duties suffered by them on the inputs, raw materials and consumables and service tax paid on the input services, used in the manufacture of export goods. According to the petitioners, the yarn, exported by the petitioner, is covered under the Drawback Scheme.

6. The petitioners exported the finished goods on payment of duty and claimed rebate of the duty paid on the finished goods exported by them in terms of prescribed procedure from their factory. The petitioners filed three rebate claims dated 1.8.2012. The fourth respondent, by Order dated 29.10.2012, rejected all the three rebate claims, filed by the petitioners on the ground that the petitioners have taken and utilised cenvat credit and availed the benefit of higher rate of drawback and in terms of the Customs Notification No.68/2011-Cus (N.T), the claimant cannot avail both cenvat credit facility and higher rate of drawback simultaneously.

7. Aggrieved over the same, the petitioners preferred an appeal before the second respondent under Sec.35 of the Central Excise Act and the second respondent also dismissed the appeal and confirmed the order of the fourth respondent.

8. Aggrieved over the order passed by the second respondent, the petitioner filed a revision before the first respondent under Sec.35 EE of the Central Excise Act. The first respondent also rejected the revision, filed by the petitioners, by its Order dated 24.08.2015. In the order passed by the first respondent, it has been stated that the petitioner has availed the higher rate of duty drawback of duty, in respect of the exported goods, the grant of rebate of the duty paid on the export goods would amount to double benefit i.e, higher rate of drawback on account of the duties paid on the materials used in the manufacture of export goods as well as rebate of the duty paid on the export goods themselves. In the Order, it is also stated that the rebate can be availed of the duty paid only on one of the stages, i.e., either of the duty paid on the finished goods or the duty paid on the materials used in the manufacture.

9. In support of his contention, the learned counsel relied on an unreported judgment of the Hon'ble Supreme Court made in Civil Appeal No.1978 of 2007 dated 9.10.2015, which reads as follows:

"26. Likewise, in Mazagon Dock Ltd vs The Commissioner of Income Tax and Excess Profits Tax, word 'or' occurring under Section 42(2) of

the Income Tax Act, 1922 was construed as 'and' when the Court found that the Legislature 'could not have intended' use of the expression 'or' in that Section. We have already explained the statutory scheme contained in the Act and Rules which express manifest intention of the Legislature which provide for granting of both kinds of rebates to the assessee. In Mazagaon Dock Ltd (supra), this aspect was explained in the following manner:

"10. The word "or" in the clause would appear to be rather inappropriate as it is susceptible of the interpretation that when some profits are made but they are less than the normal profits, tax could only be imposed either on the one or on the other, and that accordingly a tax on the actual profits earned would bar the imposition of tax on profits which might have been intended, and the word "or" would have to be read in the context as meaning "and" Vide Maxwell's Interpretation of Statutes, Tenth Edition, pages 238-239. But that, however, does not affect the present question which is whether the word "derived" indubitably points to the business of the non-resident as the one taxable under S.42(2) and for the reasons already given the answer must be in the negative."

27) The aforesaid discussion leads us to inevitable conclusion, namely, that the exporters/appellants are entitled to both the rebates under Rule 18 and not one kind of rebate. The impugned judgments are, accordingly, set aside allowing these appeals.

10. Countering the submissions made by the learned counsel for the petitioners, Mr.V. Sundareswaran, learned Standing Counsel, appearing for the respondents, submitted that the respondents have considered all the aspects and rightly rejected

the case of the petitioners. The learned Standing Counsel further submitted that there is no infirmity in the order passed by the first respondent and hence the writ petition is liable to be dismissed.

11. Heard both sides and perused the materials available on record.

12. After clearing the goods on payment of duty under claim for rebate, the petitioners should not have claimed drawback for the central excise and service tax portions, before claiming rebate of duty paid and they should have paid back the drawback amount availed before claiming rebate. When this was not done, availing both the benefits would certainly result in double benefit.

13. While sanctioning rebate, the export goods, being one and the same, the benefits availed by the petitioners on the said goods, under different scheme, are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' on export goods are governed by Rule 18 of Central Excise Rules, 2002 and Customs, Central Excise Duties and Service Tax Drawback Rules 1995. Both the rules are intended to give relief to the exporters by offsetting the duty paid. When the petitioners had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, they are not entitled for the rebate under Rule 18 of the Central Excise Rules, 2002 by way of cash payment as it would result in double benefit.

14. As per the proviso to Rule 3 of Customs, Central Excise Duties and Service Tax Drawback Rules 1995, a drawback may be allowed on the export of goods at such amount, or at such rates, as may be determined by the Central Government provided that where any goods are produced or manufactured from imported materials or excisable materials or by using any taxable services as input services, on some of which only the duty or tax chargeable thereon has been paid and not on the rest, or only a part of the duty or tax chargeable has been paid; or the duty or tax paid has been rebated or refunded in whole or in part or given as credit, under any of the provisions of the Customs Act, 1962 and the rules made thereunder, or of the Central Excise Act, 1944 and the rules made thereunder or of the Finance Act, 1994 and the rules made thereunder, the drawback admissible on the said goods shall be reduced taking into account the lesser duty or tax paid or the rebate, refund or credit obtained.

15. In the judgment relied upon the learned counsel for the petitioner, the Hon'ble Supreme Court has held that the benefits of rebate on the input on one hand as well on the finished goods exported on the other hand shall fall within the provisions of Rule 18 of Central Excise Rules, 2002 and the exporters are entitled to both the rebates under the said Rule.

16. In the case on hand, the benefits claimed by the petitioners are covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules 1995 under Section 75 of the Customs Act, 1962 and the other under Rule 18 of the Central Excise Rules, 2002. Since the issue, involved in the present writ petition, is covered under two different statutes, the judgment relied upon by the learned counsel for the petitioner is not applicable to the facts of the present case.

17. As per the proviso to Rule 3 of the Central Excise Duties and Service Tax Drawback Rules 1995, the petitioner is not entitled to claim both the rebates.

17. In these circumstances, the respondents have rightly rejected the claim made by the petitioners. I do not find any error in the order passed by the respondents and the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

sr
To

1. The Joint Secretary,
Union of India,
Finance Department,
14, HUDCO Vishala Building,
B-wing,
6th floor,
Bhikaji Cama Place,
New Delhi - 110 066

2. The Commissioner of Central Excise (Appeals),
No.1, Foulks Compound,
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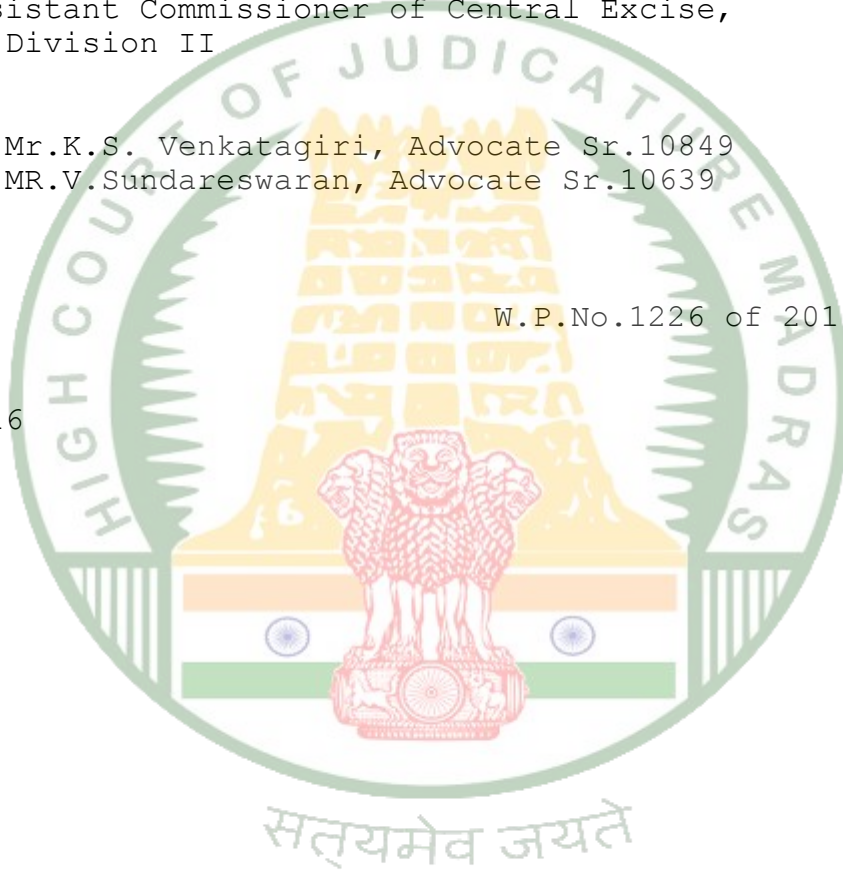
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4. The Assistant Commissioner of Central Excise,
Erode Division II
Erode

+ 1 cc to Mr.K.S. Venkatagiri, Advocate Sr.10849
+ 1 cc to MR.V.Sundareswaran, Advocate Sr.10639

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SCD(CO)
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