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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J. SATHYANARAYANA PRASAD

WRIT APPEAL NO.429 OF 2016
&
WRIT APPEAL NOS.2247 & 2248 OF 2021

W.A.No.429 of 2016

M/s.Raghav Industries Ltd.,
represented by its Vice President
T.S.No.7, Kattipalayam,
Elanagar Post,
Namakkal Main Road, 637 212
Thiruchengode, Tamilnadu

...Appellant

Versus

- 1.Union of India,
represented by its Joint Secretary
Ministry of Finance (Department of Revenue)
Revision Application Wing,
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.Asst. Commissioner of Central Excise,
Erode Division II,
Erode.

...Respondents



W.A.Nos.2247 & 2248 of 2021

M/s.Jayavarma Textiles Private Limited,
SF.No.175, Kurichipudur,
Kurichi 638 103.

(represented by V.Palanisamy, Chairman
cum Managing Director)

...Appellant in both Appeals

Versus

1.The Assistant Commissioner of CGST
and Central Excise, Erode - 1 Division,
Bharathi Nagar, Erode 638 004.

2.The Commissioner of CGST and Central Excise
No.1, Foulks Compound, Anai Road
Salem 636 001.

3.The Commissioner of GST and Central
Excise (Appeals) Coimbatore,
Circuit Office @ Salem Commissionerate,
No:1-Foulks Compound, Anai Road,
Salem 636 001

...Respondents in both Appeals

Prayer in W.A.No.429 of 2016 : Writ Appeal filed under Clause 15
of Letters Patent against the order dated 19.02.2016 passed by
this Court in W.P.No.1226 of 2016.

Prayer in W.P.No.1226 of 2016 : 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.

Prayer in W.A.Nos.2247 & 2248 of 2021 : Writ Appeals filed under
Clause 15 of Letters Patent against the common order dated
20.07.2021 passed by this Court in W.P.Nos.7664 & 7665 of 2018.

Prayer in W.P.No.7664 & 7665 of 2018 : Petitions filed under
Article 226 of the Constitution of India Praying for issuance of
Writ of Certiorarified Mandamus to call for the records of the
first respondent in Sl.No.1/2018-(R-Cex)-AC/Erode-I and
Sl.No.2/2018-(R-Cex)-AC/Erode-I respectively dated 01.03.2018
and quashing the same and consequently, direct the first
respondent to pass an appropriate order in accordance with law
without relying on the judgment in W.P.No.1226/2016 dated
19.02.2016 (M/s.Raghav Industries Ltd.).

For Appellant in
W.A.No.429 of 2016

: M/s.Lakshmi Kumaran



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For Appellant in
W.A.Nos.2248 & 2247 of 2021 : Mr. S. Durai Raj

For Respondents in : Mr. V.Sundareswaran,
W.A.No.429 of 2016 Senior Panel Counsel

For Respondents in
WA.Nos.2248 & 2247 of 2021 : Mr. S.Rajinish Pathiyil

COMMON JUDGMENT

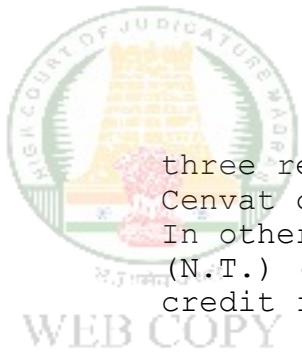
[Judgment of the Court was delivered by R.MAHADEVAN,J.]

Since the issues involved in these writ appeals are one and the same, they are taken up for hearing together and are disposed of by this common Judgment.

W.A.No.429 of 2016

2. The appellant is a manufacturer of synthetic and blended textile yarn made of duty paid raw material viz., polyester staple fiber or polyester viscose staple fibre. According to the appellant, as per the Government schemes, 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 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. Further, the Central Government announced All Industry Rates of Draw back on goods exported from India to compensate the exporters for the incidence of duties suffered by them on the inputs, raw materials, consumables and service tax paid on the input services used in the manufacture of export goods, but the same is not applicable to export of goods, if such goods are manufactured or exported by availing rebate of duty paid on materials used in the manufacture of the goods in terms of Rule 18 of Central Excise Rules, 2002. Since the appellant has neither availed the benefit of Cenvat credit nor the benefit of rebate of duty paid on the materials used in the manufacture of export products, they sought for the benefit of All Industry rate of Drawback. In order to claim rebate of the duty paid on the finished goods exported by it, as per Rule 18 of the Central Excise Rules, 2002 r/w Notification 19/2004-CE(N.T.), dated 06.09.2004, the appellant filed three rebate claims dated 01.08.2012 in respect of the duty paid on the exported finished goods.

3. The Assistant Commissioner of Central Excise, Erode II Division vide order in original dated 29.10.2012 rejected all the



three rebate claims on the ground that the appellant had utilised Cenvat credit and availed the benefit of higher rate of drawback. In other words, in terms of Customs Notification No.68/2011-Cus. (N.T.) dated 22.09.2011, the appellant cannot avail both Cenvat credit facility and higher rate of drawback simultaneously.

4. Aggrieved by the order dated 29.10.2012, the appellant filed appeal before the Commissioner of Central Excise (Appeals), Salem, under section 35 of the Central Excise Act and it was rejected vide order dated 31.01.2013. Challenging the same, the appellant filed revision petition before the Joint Secretary, Ministry of Finance, New Delhi, under section 35EE of the Central Excise Act, which was also rejected on 24.08.2015 holding that the appellant had availed the facility of duty drawback under the Customs Act and hence, the sanction of rebate of duty paid on the finished goods would amount to double benefit.

5. Assailing the aforesaid order dated 24.08.2015, the appellant filed W.P. No. 1226 of 2016. The learned Judge dismissed the writ petition by observing that as per the proviso to Rule 3 of the Central Excise Duties and Service Tax Drawback Rules 1995, the appellant is not entitled to claim both the rebates. Feeling aggrieved, the appellant is before this Court with this Writ Appeal No. 429 of 2016.

WA.Nos.2247 and 2248 of 2021:

6. The appellant is a manufacturer and exporter of cotton yarn falling under chapter 5205 of the erstwhile Central Excise Tariff Act, 1985. According to the appellant, under Rule 18 of Central Excise Rules, 2002 read with notification No.19/2004-CE (NT) dated 06.09.2004, an exporter is entitled to (i) rebate of duty paid on exported goods and (ii) rebate of duties paid on inputs and input services used in the exported goods and they are entitled to avail drawback of duties paid on inputs and input services under section 75 of the Customs Act, 1962 r/w Customs, Central Excise Duties and Service Tax Drawback Rules, 1995 and Notification No.131/2016-Cus (NT) dated 31.10.2016. The appellant further averred that cotton yarn is manufactured and exported by them, upon payment of duty through capital goods Cenvat credit and the duty paid through capital goods' credit was claimed as cash rebate. The appellant's claim for rebate was also sanctioned by cash regularly until 06.07.2016. However, similar claims made by the appellant thereafter were rejected by an order dated 01.03.2018 on the ground that even though the appellant is eligible for the duty paid on export through their Cenvat Credit (capital goods) as refund/rebate, in view of the order passed by this Court in WP No.1226 of 2016 dated 19.02.2016 in the case of Raghav Industries Limited, the said benefit cannot be extended,



whereas, according to the appellant, the said decision is not applicable to their case and therefore, the respondents ought to have sanctioned the rebate to them. The appellant also submits that as against the rejection of similar claims, appeals were filed and are pending before the appellate authority. In such circumstances, they filed WP Nos.7664 and 7665 of 2018 challenging the order dated 01.03.2018 passed by the Assistant Commissioner of CGST and Central Excise, Erode I Division, Erode, and for a consequential direction to pass appropriate orders in accordance with law without reference to the decision of this Court in Raghav Industries case.

7. The learned Judge, upon hearing both sides, disposed of the writ petitions, by order dated 20.07.2021, granting liberty to the appellant to prefer appeal before the appellate authority against the orders dated 01.03.2018, which were impugned in the writ petitions. Therefore, these writ appeals.

8. The learned counsel appearing for the appellant in all the writ appeals, in unison, submitted that the appellants availed CENVAT credit only on the purchase of the 'capital goods'. In respect of the inputs' purchased and input services' availed, they did not avail any CENVAT credit. It is further submitted that the Notification 68/2011-Cus. (N.T.) dated 22.09.2011, paragraph 15 provides for two types of draw back by way of (i) Lower rate of drawback when 'cenvat facility has not been availed on inputs or input services' and (ii) higher rate of drawback when 'cenvat facility is availed on inputs or input services'. It also defines that the phrase 'cenvat facility has not been availed' to mean non-availment of CENVAT credit in respect of inputs and input services and it does not restrict availment of CENVAT credit on capital goods. Therefore, in terms of the said notification, since no CENVAT credit was availed on 'inputs' and 'inputs services', the appellants availed drawback at All Industry Drawback Rate @ 9.5%. The customs authority after due verification of the drawback claim, sanctioned the same. It is their further submission that if the appellants availed CENVAT credit on capital goods, still they are eligible for availing higher rate of drawback. Referring to paragraph 4 of the instructions filed by the respondent's counsel dated 25.03.2022, the learned counsel submitted that the appellants never availed Cenvat credit on inputs and inputs service and therefore, they are eligible for higher rate of drawback.

9. The learned counsel for the appellants also submitted that while drawback is sanctioned by the customs authority in accordance with the Drawback Rules, rebate is sanctioned by the Central Excise Authority in accordance with CER, 2002 and hence, there is no denial of rebate on the ground that the appellants have not satisfied the conditions as specified under Rule 18 of



CER, 2002 or Notification 19/2004-CE. It is further submitted that the appellants availed rebate of duty paid on finished goods that are exported and paid the duty on finished goods using the CENVAT credit availed on capital goods. On the other hand, drawback @ 9.5% availed by the appellants pertain to the duty paid on procurement of inputs/ input services, on which no CENVAT credit was availed. Therefore, there is no double-benefit availed by the appellants. However, the learned Judge, without taking note of the said aspects, directed the appellants to file statutory appeal. Thus, the learned counsel sought to allow these appeals by setting aside the orders impugned herein.

10. The learned Senior Standing Counsel appearing for the Revenue/ Department submitted that the appellants in these appeals are attempting to avail double-benefit of drawback of duty paid on inputs/input services and rebate of duty paid on finished goods simultaneously. As per the drawback schedule introduced vide Customs Notification No.68/2011-CUS.(N.T.) and Circular No.42/2011-CUS., dated 22.09.2011, with effect from 01.10.2011, there are two types of drawback, one is composite drawback when CENVAT facility has not been availed which is at higher rate, consisting of Customs, Central Excise and Service Tax components and the another is at lesser rate of drawback, when Cenvat facility has been availed comprising customs component only. In this case, the appellants have taken and utilised Cenvat credit on capital goods and availed the benefit of higher rate of drawback. The learned Judge correctly appreciated the same and disposed of the writ petitions by relegating the appellants to file statutory appeals before the appellate authority. Thus, according to the learned senior standing counsel, the orders impugned herein, do not call for any interference by this court.

11. Heard the learned counsel appearing for the respective appellants as well as the learned counsel for the respondents and also perused the materials placed on record.

12. It is the assertive stand of the appellants that they have not availed double benefit as alleged by the respondent authorities all along. Reference was also made to the Notification No.68/2011-Cus. (N.T.) dated 22.09.2011, wherein, in paras 6 and 15, it is stated as follows:-

"6. The figures shown under the drawback rate and drawback cap appearing below the column "Drawback when Cenvat facility has not been availed" refer to the total drawback (customs, central excise and service tax component put together) allowable and those appearing under the column "Drawback when Cenvat facility has been availed" refer to the



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drawback allowable under the customs component. The difference between the two columns refers to the central excise and service tax component of drawback. If the rate indicated is the same in both the columns, it shall mean that the same pertains to only customs component and is available irrespective of whether the exporter has availed of Cenvat or not."

"15. The expression "when Cenvat facility has not been availed", used in the said Schedule, shall mean that the exporter shall satisfy the following conditions, namely:-

(i) the exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product;

(ii) if the goods are exported under bond or claim for rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in-charge of the factory of production, to the effect that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of the export product is produced:

Provided that the certificate regarding non-availment of Cenvat facility shall not be required in the case of exports of handloom products or handicrafts (including handicrafts of brass artware) or finished leather and other export products which are unconditionally exempt from the duty of central excise."

According to the appellants, the aforesaid notification would clearly go to show the double benefit only, where drawback of duty paid on inputs/input services and rebate of duty paid on inputs under Rule 18 of CER, 2002 are simultaneously availed. However, the appellants have not availed any rebate of duty paid on inputs/input services and therefore, there is no doubt benefit availed by them, which fact was not taken into account either by the respondent authorities or by the learned Judge.

13. On the other hand, the learned senior standing counsel appearing for the respondents produced a communication dated



documentary evidence, within a period of three weeks from the date of receipt of a copy of this judgment and on such submission, the authority concerned shall consider it and pass orders, within a period of four weeks thereafter.

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15. With the above directions, all the writ appeals are disposed of. No costs.

Sd/-

Assistant Registrar (CS-III)

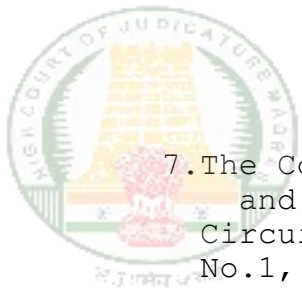
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Sub Assistant Registrar

msr/rsh

To

1. The Joint Secretary, Union of India,
Ministry of Finance (Department of Revenue)
Revision Application Wing,
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.
Commissioner of Central Excise,
No.1, Foulks Compound,
Anaimeadu, Salem 636 001.
3. The Commissioner of Central Excise,
No.1, Foulks Compound,
Anaimeadu, Salem - 636 001.
4. The Asst. Commissioner of Central Excise,
Erode Division II,
Erode.
5. The Assistant Commissioner of CGST
and Central Excise,
Erode-1 Division, Bharathi Nagar,
Erode 638 004.
6. The Commissioner of CGST and Central Excise,
No.1, Foulks Compound,
Anai Road, Salem 636 001.



7.The Commissioner of GST
and Central Excise (Appeals) Coimbatore,
Circuit Office @ Salem Commissionerate,
No.1, Foulks Compound, Anai Road, Salem - 636 001.

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+2ccs to Mr.S.Durairaj, Advocate Sr.No.23964, 23965

+1cc to Mr.Lakshmi Kumaran, Advocate Sr.No.23990

+1cc to Mr.V.Sundareswaran, Advocate Sr.No.23989

+1cc to Mr.Rajnish Pathiyil, Advocate Sr.No.24721

W.A.No.429 of 2016
&
W.A.Nos.2247 & 2248/2021

GPL (CO)
RVM(09/06/2022)