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Dear Professional Colleague,

Rebate of Excise duty admissible on both inputs and final products

We are sharing with you an important judgment of the Hon'ble Supreme Court in the case of *Spentex Industries Ltd. Vs. Commissioner of Central Excise [2015 (10) TMI 774 - SUPREME COURT]* on following issue:

Issue:

Whether the Assessee is eligible to claim rebate of Excise duty paid on inputs used in exported goods as well the Excise duty paid on exported final products under Rule 18 of the Central Excise Rules, 2002 ("**the Excise Rules**")?

Facts & Background:

Spentex Industries Ltd. ("**the Appellant**") is engaged in the business of manufacturing of polyester cotton blended yarn and polyester viscose blended yarn falling under Chapter 55 of the Central Excise Tariff Act, 1985 ("**the goods**") which were cleared domestically as well as exported. For manufacturing of the goods, the Appellant used the raw materials, which was an intermediate product and paid Excise duty thereupon. Thereafter, the Appellant had exported these goods on payment of Excise duty, and filed forty five Rebate claims in terms of Rule 18 of the Excise Rules for an amount of Rs. 1,46,90,995/- (Rs. 75,42,487/-+ Rs. 71,48,508/-) in the months of November and December, 2004 respectively. The Rebate claims were filed for both the amount of duty paid on inputs used in the manufacturing of exported goods as well as the amount of duty paid on exported final goods.

The Department rejected the Rebate claims filed by the Appellant holding that the Rebate claims are contrary to the provisions of Rule 18 of the Excise Rules read with Section 11B of the Central Excise Act, 1944 ("**the Excise Act**") and Notification issued there under i.e. Notification No. 19/2004-CE-NT dated September 06, 2004 ("**Notification No. 19**"). On appeal being filed to the Ld. Commissioner (Appeals), it was held that the Appellant is eligible to either rebate of the duty paid on inputs used in the manufacturing of exported goods or duty paid on exported goods but not eligible to both claims.

Being aggrieved, the Appellant preferred Revision Application before the Joint Secretary to the Government of India under Section 35EE of the Excise Act, which was allowed and it was held that the Appellant was eligible to claim rebate of duty paid on inputs used in exported goods as well as the duty paid on exported goods. Thereafter, the Department filed a writ petition to Hon'ble High Court of Bombay wherein it was held that the Appellant was eligible to claim only one rebate claim i.e. either rebate of duty paid on exported goods or the duty paid on inputs used in the exported goods but not both of them.

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Being aggrieved, the Appellant preferred Special Leave Petition before the Hon'ble Apex Court against the Judgment of the Hon'ble High Court of Bombay which was allowed in favour of the Appellant.

Held:

The Hon'ble Apex Court after considering historical perspective of the Statutory Scheme and relying upon the following judgments:

- ***R & B Falcon (A) Pvt. Ltd. Vs. Commissioner of Income Tax [(2008) 12 SCC 466]***
- ***Desh Bandhu Gupta and Co. and others Vs. Delhi Stock Exchange Association Ltd. [(1979) 3 SCR 373]***
- ***Union of India Vs. Kamlabhai Harjiwandas Parekh and others [(1968) 1 SCR 463]***
- ***State of Bombay Vs. R.M.D. Chamarbaugwala [(1957) 1 SCR 874]***
- ***J. Jayalalitha Vs. Union of India [(1999) 5 SCC 138]***
- ***Mazagaon Dock Ltd. Vs. The Commissioner of Income Tax and Excess Profits Tax [(1959) 1 SCR 848]***

observed as under:

- Rule 18 of the Excise Rules is an enabling provision, which authorises the Central Government to issue a notification for grant of rebates. Exercising powers under this Rule, the Central Government has issued necessary notifications for rebate in respect of both the duties, i.e., on Inputs/ intermediate product as well as on the final product, as under:
 - Notification No. 19: Dealing with grant of rebate of whole of duty on excisable goods exported;
 - Notification No. 21/2004-CE(N.T.) dated September 06, 2004 ("**Notification No. 21**") : Dealing with rebate of whole of the duty paid on excisable goods used in the manufacture or processing of exported goods.
- Normally, the words 'OR' and 'AND' are to be construed as per their literal meaning unless some other part of Statute or the clear intention of it requires that to be done. If the literal interpretation of these words gives an absurd meaning, the Court has power to construe the word 'OR' as 'AND' and vice-versa.
- Two alternative methods are provided under the Excise Rules, enabling an exporter of goods to get rid of the burden of paying the Excise duty, both on excisable goods as

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well as on materials used in the manufacture of goods, contained under Rule 18 and Rule 19 thereof. Rule 19 of the Excise Rules enable the exporter to receive the inputs to be used in manufacture of exported goods without payment of Excise duty and remove the exported goods without payment of Excise duty.

- The word 'OR' occurring in Rule 18 of the Excise Rules cannot be given literal interpretation as that leads to various disastrous results and, therefore, this word has to be read as 'AND' as that is what was intended by the rule maker in the scheme of things and to carry out the objectives of the Rule 18 of the Excise Rules and also to bring it at par with Rule 19 thereof.

The relevant extract of Rule 18 of the Excise Rules is reproduced hereunder for ease of reference:

“Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification”

Thus, the Hon'ble Apex Court held that it cannot be the intention of the Legislature to provide rebate only on one item i.e. either on inputs or final products. It was further held that giving such restrictive meaning to Rule 18 of the Excise Rules would not only be anomalous and absurd, but, it would defeat the very purpose of grant of remission from payment of Excise duty in respect of the goods which are exported out of India.

Hence, the Appellant was held to be entitled to both the rebates i.e. amount of duty paid on inputs used in the manufacturing of exported goods as well as the amount of duty paid on exported final goods, under Rule 18 of the Excise Rules.

Hope the information will assist you in your Professional endeavours. In case of any query/ information, please do not hesitate to write back to us.

Thanks & Best Regards

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