

2025:BHC-OS:7001-DB



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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.5120 OF 2022

Indorama Synthetics (I) Ltd.

.. Petitioner

Versus

The Union of India & Ors.

.. Respondents

**Mr.Sriram Sridharan a/w Mr.Shanmuga Dev a/w Ms.Aditi Jain,
Advocate for the Petitioner.**

**Mr.Jitendra Mishra, Mr.Abhishek Mishra, Mr.Rupesh Dubey,
Advocate for the Respondents.**

CORAM: B. P. COLABAWALLA &

FIRDOSH P. POONIWALLA, JJ.

RESERVED ON: MARCH 04, 2025

PRONOUNCED ON: APRIL 25, 2025

Judgement: (Per FIRDOSH P. POONIWALLA, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By the present Petition, the Petitioner challenges the Order dated 30th November 2021 passed by Respondent No.2 rejecting the rebate claim filed by the Petitioner.

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3. The Petitioner is, *inter alia*, engaged in the manufacture of Draw Texturised Yarn (DTY) falling under Chapter Heading 5406 & Polyester Staple Fibre (PSF) falling under Chapter Heading 5506. The Petitioner is undertaking the manufacturing activity in its factory premises situated at A-31, MIDC Industrial Area, DTY Division, Butibori, Nagpur.

4. During the period January 2008 to April 2008, the Petitioner cleared its final products within India on payment of excise duty. Apart from this, during this period, the Petitioner also cleared a part of its production for export on payment of excise duty.

5. It is the case of the Petitioner that, at the time of receipt of inputs within the Petitioner's factory premises, it was not possible to know as to whether the inputs would be used in the manufacture of final products cleared within India or exported by the Petitioner. Hence, the Petitioner had taken Cenvat credit of the duty paid on all the eligible inputs at the time of receipt in their factory. However, at the time of clearance of goods for export, the Petitioner reversed the Cenvat credit on inputs used in the finished goods exported. In other words, the Petitioner did not avail Cenvat credit of the duty paid on inputs used in finished goods that were exported.

6. In respect of inputs contained in the goods exported during the period January 2008 to April 2008, the Petitioner claimed drawback at the All Industry Rate on inputs under Customs Central Excise Duties and Service Tax Drawback Rules, 1995. (hereinafter referred to as the “**Drawback Rules of 1995**”). The Petitioner claimed drawback at the rate then prevailing, i.e., 16% which was the rate applicable when Cenvat credit has not been claimed. This was claimed since credit of duty paid on inputs used in finished goods was reversed / surrendered at the time of clearance of finished goods for export.

7. The Petitioner cleared consignments of the final products on payment of central excise duty for export under the claim of rebate under Rule 18 of Central Excise Rules, 2002. The Petitioner paid excise duty on the goods exported through accumulated Cenvat credit balance lying in the Cenvat account of the Petitioner. It is the case of the Petitioner that this credit did not pertain to the inputs purchased and used in the manufacture of exported goods. This credit arises out of completely unrelated transactions such as the purchase of inputs for the manufacture of goods sold domestically in India.

8. Therefore, the Petitioner claimed the following two benefits in relation to exports to relieve the burden of taxation on exported goods:

(i) Output stage: Rebate of the excise duty paid on the finished goods in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 6.9.2004; &

(ii) Input stage: Drawback of customs duty and excise duty at then prevailing rate of 16% being the rate applicable when cenvat credit had not been claimed.

9. The Petitioner had not availed credit of duty paid on inputs used in exported goods. Also, the Petitioner did not avail rebate of the duty paid on inputs used in export goods, in terms of Rule 18 of the Central Excise Rules, 2002.

10. The Petitioner filed rebate claims in respect of the excise duty paid on the exported goods, in terms of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 6.9.2004 (hereinafter referred to as “**Notification No.19/2004**”).

11. During the period January 2008 to April 2008, the Petitioner filed 297 rebate claims totaling to Rs.10,89,69,730. The Petitioner has annexed as Exhibit "B" to the Petition the table showing details of the 297 rebate claims filed by the Petitioner. The Petitioner also filed various documents along with the rebate claims.

12. Respondent No.4 examined the rebate claims and the documents filed by the Petitioner as well as the verification report submitted by the Superintendent Central Excise, Range Butibori and by Orders-in-Original sanctioned the rebate claims of the Petitioner. The Petitioner has annexed as Exhibit "D" to the Petition a table showing details of the various Orders-in-Original passed by Respondent No.4.

13. Simultaneously, the Petitioner was issued show cause notices for recovery of amount Rs.10,89,69,730 sanctioned as rebate to the Petitioner in respect of duty paid on the goods exported during the period January 2008 to April 2008. The Petitioner has annexed as Exhibit "F" to the Petition a table containing details of the show cause notices issued to the Petitioner during the period in dispute.

14. In the said show cause notices, the Department alleged that the Petitioner was claiming double benefit i.e., duty drawback at full rate on inputs under the Drawback Rules of 1995 and rebate of duty paid on the goods exported under Rule 18 under Central Excise Rules, 2002.

15. As per the Department, in respect of goods exported, the Petitioner can avail one of the following:

(a) Duty Drawback under the Drawback Rules of 1995; or

(b) Rebate of duty paid on materials used in the manufacture of goods exported in terms of Rule 18 of Central Excise Rules, 2002; or

(c) Rebate of duty paid on the goods exported in terms of Rule 18 of Central Excise Rules, 2002.

16. As per the Department, the Petitioner has claimed duty drawback on inputs as well as rebate of duty paid on the goods exported and hence, the Petitioner has contravened the provisions of Rule 18 of the Central Excise Rules, 2002, read with Notification No.19/2004. Therefore, according to the Department, the Petitioner was not entitled to rebate of duty paid on goods exported and hence the same was recoverable from the Petitioner.

17. In the meanwhile, the Commissioner of Central Excise, Nagpur reviewed the aforesaid Orders-in-Original passed by Respondent No.4 under Section 35E(2) of the Central Excise Act, 1944 and authorized the Assistant Commissioner, Central Excise & Customs, Division II, Nagpur, to file an Appeal before Respondent No.3 against the aforesaid Orders-in-Original passed by Respondent No.4.

18. Pursuant to the above authorization, the Assistant Central Excise & Customs, Division II, Nagpur filed an Appeal before Respondent

No.3. The said Appeal was filed on the ground that the Petitioner was claiming double benefit since the Petitioner was claiming rebate for duty paid on export goods as well as duty drawback on inputs used in exported goods. As per the Department, Respondent No.4 had wrongly allowed the rebate claim filed by the Petitioner under Rule 18 of the Central Excise Rules 2002.

19. A personal hearing in the matter was held on 4th December, 2015. After the personal hearing, the Petitioner filed written submission before Respondent No.3.

20. By an Order dated 18th November 2016, Respondent No.3 set aside the aforesaid Orders-in-Original passed by Respondent No.4 and allowed the appeal filed by the Department. By the said Order, Respondent No.3 ordered recovery of rebate amounting to Rs.10,89,69,730/- sanctioned to the Petitioner, along with interest.

21. Respondent No.3 in the Order in Appeal dated 18th November 2016 held as under:

(a) The Petitioner has reversed the cenvat credit on the inputs used in the goods exported. However, the Petitioner continued to use the cenvat facility as is evident from the fact that Petitioner paid the duty on the final product from the cenvat account. Therefore, the condition of Notification

No. 68/2007. Cus (NT) i.e., "when cenvat facility has not been availed" for claiming drawback at all industry rate has not been satisfied by the Petitioner. Hence, the Petitioner is not entitled for drawback of duty paid on inputs.

(b) The Petitioner paid the duty on the final product from the cenvat account and therefore, it shall be construed that the petitioner is availing the cenvat credit facility. Therefore, the declaration "we have not availed cenvat credit facility" required to be provided by the exporter for claiming rebate is not fulfilled by the Petitioner. Hence, the petitioner is not entitled for rebate claim.

(c) From the scheme of Rule 18, it is clear that it was never the intention of the Government to allow All Industry rate of drawback on exported goods as also rebate of finished goods duty in respect of goods exported.

(d) In case where, the exporters claim the rebate on the final product exported then he could have claimed only drawback of customs duty portion paid on the inputs.

(e) The decision in the case of Spentex Industries Ltd. Vs. CCE-2015-TIOL-239-SC-CX is not applicable in the present case.

(f) The petitioner is liable to pay interest on the excess amount of rebate claim received by them.

22. Being aggrieved and dissatisfied with the Order-in-Appeal dated 18th January, 2016 passed by Respondent No.3, the Petitioner filed a Revision Application before Respondent No. 2. A personal hearing in the matter was held on 27th October, 2021. During the course of personal hearing, the Petitioner filed compilation of statutory provisions and judgements. By the

impugned Order dated 30th November, 2021, Respondent No.2 rejected the Petitioner's Revision Application and upheld the Order-in-Appeal dated 18th January, 2016.

23. Being aggrieved by the said Order dated 30th November, 2021 passed by Respondent No. 2, the Petitioner has filed the present Petition.

24. Mr.Sriram Sridharan, the learned Advocate appearing on behalf of the Petitioner, submitted that there was no double benefit being availed by the Petitioner in the facts and circumstances of the present matter. In this context, Mr.Sridharan submitted that a double benefit would arise in a case where, for a single tax incidence, relief is availed more than once. He submitted that the benefits or reliefs available to the manufacturer-exporter on the input side, i.e. in relation to the burden of duties/taxes embedded in the inputs purchased by the manufacturer-exporter for use in the manufacture of the exported goods, are as follows:

i) rebate of input excise duty paid by the manufacturer-exporter to its vendors on the materials purchased by it and used in the manufacture of exported goods in terms of Rule 18 of Central Excise Rules, 2002 r.w. Notification No. 19/2004 or

ii) drawback i.e. rebate of duty or tax chargeable on any imported materials or excisable materials or input services

used in the manufacture of the exported goods under the Drawback Rules of 1995.

25. Mr.Sridharan submitted that Notification No. 19/2004 governs the procedure for availing rebate of input excise duty under Rule 18 of the Central Excise Rules 2002. It provides that the manufacturer-exporter must make a claim for rebate in Form ARE-2. Form ARE-2 specifically requires the following declarations from the manufacturer-exporter :

“(a) We hereby certify that we have not availed facility of CENVAT credit under CENVAT Credit Rules, 2002.

(c) We hereby declare that the materials on which input stage rebate is claimed are not sought to be imported under a Quantity Based Advance License issued prior to 31-3-95.”

26. Further, Mr.Sridharan submitted that in terms of the Drawback Rules of 1995, the Government issued Notification No. 68/2007-Cus (N.T.) dated 16/07/2007 (hereinafter referred to as “Notification No.68/2007”) which prescribed the All Industry Rates of Drawback. Mr.Sridharan submitted that as per the Conditions of the said Notification, there were two types of Drawback Rates for every commodity i.e. (i) Drawback Rate when Cenvat facility has not been availed and (ii) Drawback Rate when Cenvat facility has been availed. Further, Mr.Sridharan submitted that, in case the

exporter claims the rate of drawback where Cenvat facility has not been availed, he has to prove that he has actually not availed of the Cenvat facility. Mr.Sridharan submitted that, hence, if a person avails Cenvat, he is not eligible to input side rebate under Rule 18 of the Central Excise Rules 2002, nor is he eligible to drawback at the higher rate under the head of “Drawback when Cenvat facility has not been availed.”

27. Further, Mr.Sridharan submitted that benefits or reliefs available to the manufacturer/exporter on the output side, i.e. in relation to the excise duty leviable on the manufacturer-exporter when he manufactures the exported goods in his factory are as follows:

(i) export of goods without payment of Excise Duty under cover of a LUT/Bond in terms of Rule 19 of the Central Excise Rules, 2002.

(ii) rebate of output excise duty paid by the manufacturer/exporter to the Government on the manufacture of the exported goods in terms of Rule 18 of the Central Excise Rules, 2002;

28. Mr.Sridharan submitted that it is settled law that a manufacturer/exporter is eligible to avail benefits/reliefs on both the input stage as well as the output stage on exported goods. Mr.Sridharan submitted that doing so is not a double benefit. This is because the manufacturer/exporter is claiming reliefs against two separate tax incidences. On the input side, he is claiming relief of the taxes embedded in the inputs purchased by him for use in manufacture of the exported goods, and on the output side, he is claiming relief of the output duty paid by him on the activity of manufacturing the exported goods.

29. Mr.Sridharan submitted that a double benefit would arise where a manufacturer/exporter claims multiple input side benefits or where a manufacturer-exporter claims multiple output side benefits.

30. Mr.Sridharan submitted that in the present case, the Petitioner has claimed :

i) output rebate under Rule 18 of the Central Excise Rules, 2002, duty paid by it on the activity of manufacturing the exported goods;

ii) on the input side, drawback at the All Industry Rate of 16% under the category of "Cenvat facility not availed".

31. Mr.Sridharan submitted that the Petitioner had duly reversed the amount of Cenvat credit availed in the inputs that were used in the manufacture of exported goods. Mr.Sridharan submitted that it is settled law that reversal of credit amounts to, and is equivalent to, credit never having been availed at all. In this regard, Mr.Sridharan relied upon the judgement of the *Hon'ble Supreme Court in CCE v. Bombay Dyeing & Mfg. Co. Ltd. (2007 (215) ELT 3 (SC))*. Mr.Sridharan further submitted that, hence, the Petitioner has correctly availed, on the input side, drawback at the All Industry Rate of 16% under the category of "Cenvat facility not availed". Hence, the Petitioner has correctly availed one input side benefit and one output side benefit.

32. In support of this submission, Mr.Sridharan placed strong reliance on the judgement of the Hon'ble Supreme Court in the case of *Spentex Industries Ltd. Vs. CCE (2015 (324) ELT 686 (SC))*. He submitted that in this case, the assessee/manufacturer used duty paid inputs for manufacture of goods which were finally exported after payment of Central Excise duty. Rebate claims filed in respect of duty paid on inputs and on finished goods were rejected by the Department. This Court, in *Commissioner v. Indorama Textiles Ltd. (2006 (200) E.L.T. 3 (Bom.))*, was of the view that out of the two excise duties, Rule 18 of the Central Excise Rules, 2002, permits rebate only qua one of them and not on both the duties.

Mr.Sridharan submitted that overruling the said judgement, the Hon'ble Supreme Court was of the view that exporters are entitled to both input and output rebate under Rule 18 of the Central Excise Rules 2002 and not just one kind of rebate.

33. Mr.Sridharan submitted that, hence, in light of the same, there was no double benefit availed by the Petitioner and that it is permissible in law to avail both input and output side benefits. Mr.Sridharan further submitted that there is no express or specific bar under Rule 18 of the Central Excise Rules 2002, read with Notification No. 19/2004, to deny the rebate of duty paid on the exported goods on the ground that drawback has been claimed on inputs or accumulated Cenvat credit has been utilized for payment of excise duty on the exported goods. In the context of this submission, Mr.Sridharan submitted that Rule 18 of the Central Excise Rules, 2002 provides for rebate of duty paid on excisable goods exported subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. Mr.Sridharan submitted that Notification No.19/2004 prescribes the conditions or limitations for claiming rebate of whole of the duty paid on excisable goods exported. Mr.Sridharan submitted that, on perusal of the aforesaid conditions, it is clear that Notification No.19 of 2004 nowhere provides that duty on the exported goods

cannot be paid through accumulated Cenvat credit in order to claim rebate. Furthermore, the Notification does not bar the grant of rebate in case where duty drawback has been claimed in respect of inputs used in the exported goods. Mr.Sridharan submitted that, hence, there is absolutely no bar in law preventing a manufacturer/exporter from claiming rebate of duty paid on the exported goods as well as claiming drawback on the inputs.

34. Mr.Sridharan further submitted that the impugned Order had erroneously held that the Petitioner has availed of double benefits. In this context, he submitted that one of the findings in the impugned Order was that the definition of "drawback" in Drawback Rules of 1995 makes it clear that drawback is a rebate of duty on inputs used in manufacture of exported goods. Further, the impugned Order held that Rule 18 of Central Excise Rules, 2002 stipulates that in case of export of goods, the assessee shall be eligible for grant of rebate of duty on such excisable goods or on inputs used for manufacturing such excisable goods. The impugned Order held that, since drawback availed by the Petitioner in the present case is nothing but rebate of duty on input, therefore, the rebate of duty on export of goods claimed by the Petitioner was incorrect. In the context of this finding, Mr.Sridharan submitted that the same had completely conflated input and outside side benefits. Mr.Sridharan submitted that drawback is an input side benefit

granting the Petitioner rebate of the duties/taxes embedded in the inputs purchased by it. Furthermore, the Petitioner had claimed only output rebate under Rule 18 of the Central Excise Rules 2002 and had not claimed any input side rebate under Rule 18 of the Central Excise Rules 2002. Mr.Sridharan submitted that the impugned Order had conflated the output rebate under Rule 18 of the Central Excise Rules 2002 claimed by the Petitioner with an input rebate under the said Rule 18. Mr.Sridharan submitted that there is absolutely no bar in law and nor is there a double benefit for the Petitioner to claim drawback on inputs and output rebate in respect of the excise duty paid on the exported goods. Mr.Sridharan further submitted that this finding in the impugned Order runs directly contrary to the law laid down by the Hon'ble Supreme Court in the judgement in **Spentex (supra)**.

35. Mr.Sridharan further submitted that the impugned Order had also held that the Petitioner has tried to obtain undue advantage of export opportunity to encash additional amount lying idle in its Cenvat account. The impugned Order has also held that there was no necessity to pay duty on exported goods. Thus, allowing rebate would amount to double benefit which cannot be held admissible.

36. In the context of this finding, Mr.Sridharan submitted that there was no requirement that output rebate under Rule 18 of the Central Excise Rules, 2002, can only be claimed when the output duty on the exported goods is paid in cash. He submitted that such a requirement would be illogical and perverse. There would be absolutely no reason for a businessman to make payment of the output excise duty in cash just to claim back the same amount as a rebate under Rule 18 of the Central Excise Rules 2002. He submitted that such an exercise defies logic, commercial prudence and would simply block the working capital of a business for an undetermined amount of time for no benefit at all. In such a scenario, the manufacturer-exporter would simply export under Rule 19 of the Central Excise Rules, 2002, without payment of excise duty. Mr.Sridharan submitted that, in fact, the only time a businessman would ever choose to pay duty on exported goods is when he has accumulated credits which he can then claim back in cash as rebate. He submitted that this is, in fact, the benefit extended to an exporter under Rule 18 of the Central Excise Rules, 2002. Otherwise, the manufacturer-exporter would simply choose to pay no duty at all on the exported goods under Rule 19 of the Central Excise Rules, 2002.

37. Mr.Sridharan submitted that the finding in the impugned Order that, by utilising Cenvat credit facility the Petitioner had violated Condition 12(ii) of Notification No.68/2007, is also totally incorrect.

38. Mr.Sridharan submitted that, for all the aforesaid reasons, the impugned Order is required to be set aside.

39. Mr.Mishra, the learned Advocate appearing on behalf of the Respondents, supported the Order dated 30th November 2021 passed by Respondent No.2.

40. Mr.Mishra submitted that, after clearing the goods on payment of duty under claim for rebate, the Petitioner should not have claimed drawback for the Central Excise and Service Tax portions before claiming rebate of duty paid and the Petitioner should have paid back the drawback amount availed before claiming rebate. Since this was not done by the Petitioner, availing of both the benefits would result in double benefits to the Petitioner.

41. Mr.Mishra further submitted that while, sanctioning rebate, the exported goods being one and the same, the benefits availed by the Petitioner

on the said goods under different claims are required to be taken into account for ensuring that the sanction does not result in undue benefit to the claimant. Mr.Mishra submitted that the rebate of duty paid on excisable goods exported and duty drawback on exported goods are governed by Rule 18 of the Central Excise Rules, 2002 and by the Drawback Rules of 1995. Both the Rules are intended to give relief to the exporters by offsetting the duty paid. Mr.Mishra submitted that when the Petitioner had availed duty drawback of Customs, Central Excise and Service Tax on the exported goods, it was not entitled for rebate under Rule 18 of the Central Excise Rules, 2002, as it would result in double benefit.

42. In respect of the judgement of the Hon'ble Supreme Court in *Spentex Industries Ltd. (supra)*, Mr. Mishra submitted that, in the said judgement, the Hon'ble Supreme Court had held that the benefits of rebate on input on one hand as well as on the finished goods exported on the other hand shall fall within the provisions of Rule 18 of the Central Excise Rules 2002 and the exporters are entitled to both the rebates under the said Rule. Mr.Mishra submitted that, in the present case, the benefits claimed by the Petitioner are covered under two different statutes. One under the Drawback Rules of 1995, which are enacted under Section 75 of the Customs Act, 1962, and the other under Rule 18 of the Central Excise Rules, 2002. Mr.Mishra

submitted that, since the issue involved in the present Writ Petition is covered under two different statutes, the judgement in *Spentex Industries Ltd.(supra)* was not applicable to the facts of the present case.

43. Further, Mr.Misra relied on the judgement of the Single Judge of the Madras High Court in *Raghav Industries Ltd. Vs Union of India, 2016 (334) E.L.T. 584 (Mad.)* and of the Division Bench of the Madras High Court in *Raghav Industries Ltd. vs. Union of India, 2023 (383) E.L.T. 63 (Mad.)*.

44. In support of his submissions, Mr.Mishra also relied upon the judgement of this Court in *Kunal Houseware Private Limited vs. The Union of India and Ors. passed in Writ Petition No.2215 of 2023*.

45. Mr.Mishra submitted that, for all the aforesaid reasons, the present Writ Petition ought to be dismissed.

FINDINGS AND CONCLUSIONS:

46. At the outset, before referring to the facts of the present case and before considering the validity of the impugned Order dated 30th November 2021, it would be appropriate to set out the various benefits or reliefs that are

available to an assessee who is engaged in manufacture and export of finished goods. These benefits are as under:

- i) Export of goods without payment of duty under Rule 19 of the Central Excise Rules, 2002.
- ii) Rebate of output excise duty paid by the manufacturer/exporter to the Government on the manufacture of the exported goods in terms of Rule 18 of the Central Excise Rules, 2002.
- iii) Rebate of input excise duty paid by the manufacturer/exporter to its vendors on the material purchased by it and used in the manufacture of exported goods in terms of Rule 18 of the Central Excise Rules, 2002.
- iv) Drawback i.e. rebate of duty or tax chargeable on any imported materials or excisable materials or input services used in the manufacture of exported goods under the Drawback Rules of 1995.

47. The benefits referred to at Serial No.(i) and (ii) in the previous paragraph relate to benefits or reliefs available to the manufacturer/exporter on the output side i.e. in relation to the excise duty leviable on the manufacturer/exporter when he manufactures the exported goods in his

factory. The benefits referred to at Serial Nos.(iii) and (iv) of the previous paragraph are related to the benefits available to the manufacturer/exporter on the input side i.e. in relation to the burden of duties/taxes embedded in the inputs purchased by the manufacturer/exporter for use in the manufacture of exported goods.

48. A double benefit would arise in a case where, for a single incidence, relief is availed more than once i.e. if relief is claimed more than once on the output side or if relief is claimed more than once on the input side. If relief is claimed only once on the output side and once on the input side then the same would not amount to a double benefit to the manufacturer/exporter.

49. As stated earlier, the benefits or reliefs available to the manufacturer/exporter on the input side are (i) rebate of input excise duty paid by the manufacturer/exporter to its vendors on the material purchased by it and used in the manufacture of exported goods in terms of Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004; or (ii) drawback i.e. rebate of duty or tax chargeable on any imported material or excisable material or input service used in the manufacture of exported goods

under the Drawback Rules of 1995. Rule 18 of the Central Excise Rules, 2002 reads as under:

Rule 18. Rebate of duty. -

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 fulfilment of such procedure, as may be specified in the notification.

Explanation. - For the purposes of this rule, "export", with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India and includes shipment of goods as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

50. Notification No.19/2004 governs the procedure for availing rebate of input excise duty under Rule 18. It provides that the manufacturer/exporter must make a claim for rebate in Form ARE-2 which specifically requires the following declarations from the manufacturer/exporter:

“(a) We hereby certify that we have not availed facility of CENVAT credit under CENVAT Credit Rules, 2002.

(c) We hereby declare that the materials on which input stage rebate is claimed are not sought to be imported under a Quantity Based Advance License issued prior to 31-3-95.”

51. As stated above, drawback is claimed under the Drawback Rules of 1995. In terms of the Drawback Rules of 1995, the Government issued Notification No.68/2007 which prescribed the All Industry Rates of Drawback. Condition Nos.5 and 12 of the said Notification are relevant and read as under:

(5) The figures shown under 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 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.

(12) 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 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 the goods under export, 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.

52. On a reading of the aforesaid conditions, it can be seen that there are two types of Drawback Rates for every commodity i.e. Drawback Rate when Cenvat facility has not been availed and Drawback Rate when cenvat facility has been availed. In case an exporter claims the rate of Drawback for the scenario where cenvat facility has not been availed, he has to prove that he has actually availed no cenvat facility.

53. Similarly, as stated earlier, the benefits or reliefs available to the manufacturer/exporter on the output side i.e. in relation to the excise duty leviable on the manufacturer/exporter when he manufactures the exported goods in his factory are (i) export of goods without payment of duty in terms of Rule 19 of the Central Excise Rules, 2002 or (ii) rebate of output excise duty paid by the manufacturer/exporter to the Government on the manufacture of exported goods in terms of Rule 18 of the Central Excise Rules, 2002.

54. A manufacturer/exporter is eligible to avail benefits on both the input side as well as the output side on exported goods. Doing so is not a double benefit. This is because the manufacturer/exporter is claiming reliefs against two separate tax incidences. On the input side, he is claiming relief of the taxes embedded in the inputs purchased by him for use in manufacture of exported goods. On the output side, he is claiming relief of output duty paid by him on the activity of manufacturing the exported goods. A double benefit would arise when a manufacturer/exporter claims multiple input side benefits or where a manufacturer/exporter claims multiple output side benefits.

55. In the present case, the Petitioner has claimed i) output rebate under Rule 18 of the Central Excise Rules of the Excise Duty paid by it on the activity of manufacturing the exported goods and ii) on the input side, drawback at the All Industry Rate of 16% under the category of “Cenvat facility not availed”.

56. The Petitioner has duly reversed the amount of Cenvat credit availed by it in the inputs that were used in the manufacture of exported goods. In the case of *Bombay Dyeing & Mfg. Co. Ltd. (supra)*, the Hon’ble Supreme Court has held that reversal of Credit amounts to and is equivalent

to Credit never having been availed at all. Paragraph 8 of the said judgement is relevant and is set out hereunder:

8. There is no merit in this civil appeal. Under the notification, mode of payment has not been prescribed. Further, exemption is given to the final product, namely, grey fabric under the Central Excise Act, 1944, levy is on manufacture but payment is at the time of clearance. Under the Act, payment of duty on yarn had to be at the spindle stage. However, when we come to the Exemption Notification No. 14/2002-C.E., the requirement was that exemption on grey fabrics was admissible subject to the assessee paying duty on yarn before claiming exemption and subject to the assessee not claiming CENVAT credit before claiming exemption. The question of exemption from payment of duty on grey fabrics arose on satisfaction of the said two conditions. In this case, payment of duty on yarn on deferred basis took place before clearance of grey fabrics on which exemption was claimed. Therefore, payment was made before the stage of exemption. Similarly, on payment of duty on the input (yarn) the assessee got the credit which was never utilized. That before utilization, the entry has been reversed which amounts to not taking credit. Hence, in this case, both the conditions are satisfied. Hence item no. 1 of the table to Notification No. 14/2002-C.E. would apply and accordingly the grey fabrics would attract nil rate of duty.

57. Hence, in our view, the Petitioner correctly availed on the input side drawback at the All Industry Rate of 16% under the category of “Cenvat facility not available”. Hence, the Petitioner has correctly availed one input side benefit and one output side benefit.

58. In the case of *Spentex Industries Ltd. (supra)*, the assessee-manufacturer used duty paid inputs for manufacture of goods which were finally exported after payment of Central Excise Duty. The rebate claims filed in respect of duty paid on inputs and on finished goods were rejected by the Department. This Court had taken a view that out of the two excise duties, Rule 18 of the Central Excise Rules, 2002 permits rebate only qua one of them and not on both the duties. Overruling the said decision of this Court, the Hon'ble Supreme Court was of the view that exporters are entitled to both input side and output side rebate under Rule 18 and not just one kind of rebate. Paragraphs 15 to 27 of the judgement in *Spentex Industries Ltd. (supra)* are relevant and are set out hereunder:

15. *The argument of learned counsel for the appellant is that it has always been the policy of the Central Government to exempt the goods from payment of excise duty both on the final excisable products as well as on material used in the manufacturing of goods for payment of duty if the goods are meant for export outside India. Moreover, Rule 18 is only an enabling provision and in exercise of powers contained in this Rule, the Central Government has also issued notification for grant of rebate or duty paid on excisable goods as well as duty paid on material used in the manufacture of goods. Even the notifications which prescribe the procedure contemplate a situation where duty may have been paid not only on the excisable goods but on the material used in the manufacture of goods and provide for claiming the rebate in respect of duty paid on both these goods. It was also argued that the order of the Joint Secretary, Government of India further shows the mind of the Government itself,*

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disclosing that both the duties are eligible for grant of rebate. On that basis, it is argued that Rule 18 has to be interpreted keeping in view the overall scheme of the statute and the Rules and the manner in which the Government itself operated the said Rule. Learned counsel for the respondent, on the other hand, predicated his arguments on the plain and grammatical meaning that needs to be accorded to Rule 18 of the Rules by arguing that the word 'OR' used therein clearly signifies that it is one of the two duties to which the rebate can be granted and not both. For this purpose, reasoning given by the High Court was adopted with the submission that it was in accord with the cardinal principle of literal interpretation and, therefore, the view of the High Court was correct in law.

16. After giving due consideration to the respective submissions, in the light of statutory scheme envisaged for grant of rebate in the Act and Rules, we are constrained to hold that the High Court has not taken correct view, which we feel is a myopic view and ignores the overall scheme pertaining to grant of rebate in respect of goods exported out of India. There are multiple reasons for arriving at this conclusion which are discussed hereinafter.

(i) Historical perspective of the statutory scheme: Central Excise Rules under the Act were first framed in the year 1944. Rule 12 thereof provided for rebate of duty and Rule 13 enabled exporter to export the goods without payment of duty. Relevant portion of these Rules was as under:

"Rule 12. Rebate of duty. - The Central Government may, from time to time, by notification in the Official Gazette, grant rebate of -

(a) duty paid on the excisable goods;

(b) duty paid on materials used in the manufacture of goods; if such goods are exported outside India or shipped as provision or stores for

use on board a ship proceeding to a foreign port, or supplied to a foreign going aircraft to such extent and subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification.

Rule 13. Export in bond of goods on which duty has not been paid. -

(1) The Central Government may, from time to time, by notification in the Official Gazette -

(a) permit export of specified excisable goods in bond without payment of duty, in the like manner, as the goods regarding which the rebate is granted under sub-rule (i) of Rule 12 from a factory of manufacture or warehouse or any other premises as may be approved by the Commissioner of Central Excise;

(b) specify materials, removal of which without payment of duty from the place of manufacture or storage for use in the manufacture in bond of export goods may be permitted by Commissioner of Central Excise;

(c) Allow removal of excisable material without payment of duty for the manufacture of export goods, as may be specified, to be exported in execution of one or more export orders; or for replenishment of duty paid materials used in the manufacture of such export goods already exported for the execution of such orders, or both; subject to such safeguards, conditions and limitations as regards the class or description of goods, class or description of materials used for manufacture thereof, destination, mode of transport and other allied matters as may be specified in the notification which the exporter undertakes to abide

by entering into a bond in the proper form with such surety or sufficient security, and under such conditions as the Commissioner approves.

17. *It is manifest from the reading of the aforesaid Rules that from the very beginning, two alternative methods were provided enabling an exporter of goods to get rid of the burden of paying the excise duty; both on excisable goods as well as on materials used in the manufacture of goods. The exporter could either claim rebate when the duty was paid. Or else, he was free not to pay excise duty at all on both types of goods by executing a bond in the prescribed form and fulfilling the conditions prescribed in this behalf. The grant of rebate, in either of the options, has always been in respect of both kinds of excise duties, i.e. on the final product that is exported as well as on the intermediate product on which excise duty is paid/payable and the same is used as raw material in the manufacture of goods. Under these Rules also, Notification No. 41/94-C.E (N.T.), dated September 12, 1994 and Notification No. 42/94-C.E. (N.T.), dated September 21, 1994 were issued for grant of rebate of duty on export of all excisable goods, except minerals oils and ship stores and rebate on materials used in manufacture of goods exported out of India, respectively.*

18. *The aforesaid Rules of 1944 were replaced by Central Excise Rules, 2001. In these rules, relevant provisions were Rules 18 and 19. It is not necessary to reproduce these Rules which are same as Rules 18 and 19 of the existing Rules. Under these Rules also similar Notifications were issued, i.e., Notification No. 10/2001-C.E. (N.T.), dated June 26, 2001 and Notification No. 41/2001-C.E. (N.T.), dated June 26, 2001 providing for rebate of whole of duty on excisable goods when exported as well as rebate of inputs used in manufacture/processing of export goods. Likewise, Notifications 40 and 41 dated June 26, 2001 were issued under Rule 19 of these Rules.*

19. *Central Excise Rules, 2001 were superseded by*

the present Rules, viz. Central Excise Rules, 2002 and the exact provisions thereof have already been quoted. The aforesaid historical narration of the relevant provisions from time to time depict one common theme, namely, to provide rebate of duty paid on the excisable goods as well as the duty paid on material used in the manufacture of goods.

*(ii) **Scheme of the Rules:** A cumulative reading of the scheme enshrined in Rules 18 and 19 of the Rules, 2002 has already been pointed out above. These Rules provide two alternatives to the exporter enabling him to get the benefit of exemption from paying the excise duty. Under Rule 19, exporter is not required to pay any excise duty at all. At the time of removal of these goods from the factory gate of the producer or the manufacturer or the warehouse or any other premises, he is supposed to comply with the conditions, safeguards and procedure, as may be notified by the Board. Such a procedure provides for execution of a bond which, inter alia, lays down the condition that the goods which are cleared are actually meant for export and he is to furnish the proof that those goods are actually exported. What is important is that when the exporter opts for this method, with the approval of the Commissioner, he is not required to pay duty either on the final product, i.e., on excisable goods or on the material used in the manufacture of those goods. The intention is loud and clear, namely, the goods which are meant for exports are free from any excise duty. It extends not only to the material which is used in the manufacture of goods but also on the goods that are produced and ultimately exported. Once we keep in mind this scheme, it cannot be the intention of the Legislature to provide rebate only on one item in case a particular exporter/manufacturer opts for other alternative under Rule 18, namely paying the duty in the first instance and then claiming the rebate.*

Giving such restrictive meaning to Rule 18 would not only be anomalous but would lead to absurdity as well. In fact, 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. It may also lead to invidious discrimination and arbitrary results.

Let us visualize another situation. A particular exporter may opt for scheme under Rule 18, i.e., for claim of rebate insofar as, say, excise duty on material used in manufacture of goods is concerned. He would pay that duty and claim rebate. When it comes to payment of duty of export of excisable goods, he exercises the option under Rule 19 and executes a bond which enables him not to pay any duty on excisable goods. In this scenario, the exporter will still be able to get the benefit of not paying any excise duty on both final product as well as intermediate product.

(iii) **Government's own perception:** As mentioned above, Rule 18 is enabling provision which authorises the Central Government to issue a notification for grant of these rebates. Exercising powers under this Rule, the Central Government has issued necessary notifications for rebate in respect of both the duties, ie., on intermediate product as well as on the final product. Further, and which is more significant, these notifications providing detailed procedure for claiming such rebates contemplate a situation where excise duty may have been paid both on the excisable goods and on material used in the manufacture of those goods and enables the exporter to claim rebate on both the duties. This kind of procedure and format of prescribed Forms, already described above, becomes a clincher insofar as understanding of the Government of Rule 18 of the Rules is concerned.

20. It is to be borne in mind that it is the Central

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Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties the Government is bound thereby and the rule in-question has to interpreted in accord with this understanding of the rule maker itself. Law in this respect is well settled and, therefore, it is not necessary to burden this judgment by quoting from various decisions. Our purpose would be served by referring to one such decision in the case of R & B Falcon (A) Pty Ltd. v. Commissioner of Income Tax - (2008) 12 SCC 466 wherein interpretation given by the Central Board of Direct Taxes (CBDT) to a particular provision was held binding on the tax authorities. The Court explained this principle in the following manner:

"33. CBDT has the requisite jurisdiction to interpret the provisions of the Income Tax Act. The interpretation of the CBDT being in the realm of executive construction, should ordinarily be held to be binding, save and except where it violates any provisions of law or is contrary to any judgment rendered by the Courts. The reason for giving effect to such executive construction is not only same as contemporaneous which would come within the purview of the maxim temporaria leges, even in certain situation a representation made by an authority like Minister presenting the Bill before Parliament may also be found bound thereby.

34. Rules of executive construction in a situation of this nature may also be applied. Where a representation is made by the maker of legislation at the time of introduction of the Bill or construction thereupon is put by the executive upon its coming into force, the same carries a great weight.

35. In this regard, we may refer to the decision of

the House of Lords in R (Westminster City Council) v. National Asylum Support Service - (2002) 1 WLR 2956; (2002) 4 All ER 654 (HL) and its interpretation of the decision in Pepper v. Hart-1993 AC 593; (1992) 3 WLR 1032 (1993) 1 All ER 42 (HL) on the question of "executive estoppel". In the former decision, Lord Steyn stated: (WLR p. 2959, para 6)

"6. If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a Court."

36. A similar interpretation was rendered by Lord Hope of Craighead in Wilson v. First County Trust Ltd. (No. 2) - (2004) 1 AC 816; (2003) 3 WLR 568 : (2003) 4 All ER 97 (HL), wherein it was stated: (WLR p. 600, para 113)

"113....As I understand it [Pepper v. Hart-1993 AC 593; (1992) 3 WLR 1032; (1993) 1 All ER 42 (HL)], it recognised a limited exception to the general rule that resort to Hansard was inadmissible. Its purpose is to prevent the executive seeking to place a meaning on words used in legislation which is different from that which ministers attributed to those words when promoting the legislation in Parliament."

37. For a detailed analysis of the rule of executive estoppel useful reference may be to the article authored by Francis Bennion entitled "Executive Estoppel: Pepper v. Hart Revisited", published in Public Law, Spring 2007, p. 1 which throws a new light on the subject-matter."

21. *We are also of the opinion that another principle of interpretation of statutes, namely, principle of contemporanea expositio also becomes applicable which is manifest from the act of the Government in issuing two notifications giving effect to Rule 18. This principle was explained by the Court in Desh Bandhu Gupta and Co. and Others v. Delhi Stock Exchange Association Ltd. - (1979) 3 SCR 373 in the following manner:*

"9. It may be stated that it was not disputed before us that these two documents which came into existence almost simultaneously with the issuance of the notification could be looked at for finding out the true intention of the Government in issuing the notification in question, particularly in regard to the manner in which outstanding transactions were to be closed or liquidated. The principle of contemporanea expositio (interpreting a statute or any other document by reference to the exposition it has received from contemporary authority) can be invoked though the same will not always be decisive of the question of construction. (Maxwell 12th Edn. p. 268). In Crawford on Statutory Construction (1940 Edn.) in para 219 (at pp. 393-395) it has been stated that administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction commonly referred to as practical construction although not controlling, is nevertheless entitled to considerable weight it is highly persuasive. In Baleshwar Bagarti v. Bhagirathi Dass - (1908) ILR 35 Cal 701 at 713 the principle which was reiterated in Mathura Mohan Saha v. Ram Kumar Saha, ILR 43 Cal. 790: (AIR 1916 Cal. 136) has been stated by Mukerjea J. thus:

"It is a well-settled principle of construction that Courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it

has been to construe, execute and apply it. I do not suggest for a moment that such interpretation has by any means a controlling effect upon the Courts; such interpretation may, if occasion arises have to be disregarded for cogent and persuasive reasons, and in a clear case of error, a Court would without hesitation refuse to follow such construction."

Of course, even without the aid of these two documents which contain a contemporaneous exposition of the Government's intention, we have come to the conclusion that on a plain construction of the notification the proviso permitted the closing out or liquidation of all outstanding transactions by entering into a forward contract in accordance with the rules, bye-laws and regulations of the respondent."

22. *In this hue, we may now advert to the reasoning given by the Joint Secretary itself in the order passed in Revision Petition wherein he has discussed the issue in the following perspective:*

"..... Govt. notes that as a principle and a policy measure, Govt. has accepted that export of goods from India should be relieved of domestic levies (both Customs and Central Excise) in order to promote export of domestic products from India and to make them internationally competitive. In order to achieve this objective, two schemes operate, namely, export under bond and export under payment of duty and both are comparable, as objectives of both the schemes are same, i.e., to neutralize the burden of internal levies on goods exported. In case of former, export goods are exempted from payment of duty, subject to conditions/restrictions, etc., and in the case of latter export goods are cleared on payment of duty which is rebated subject to production of proof of export. For export under bond Rule 19 provides for excisable goods to be exported without payment of duty, subject to conditions, etc., which are detailed in Notfn. No. 42/2001-C.E. (N.T.), dated 26-6-2001 and Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001 further relieves the burden of duty on inputs used to manufacture such goods by obtaining them duty free under

bond. Thus, export goods are relieved of the burden of excise duty both on finally exported goods as well the inputs used vide these legislative and machinery provisions. As both schemes are comparable as objective to serve the common goal of relieving the burden of domestic taxation, the other scheme provides for similar dispensation in case goods are exported on payment of duty by way of rebating central excise duty suffered on such export goods. Rule 18 provides for rebate of duty on such export goods or duty paid on material used in manufacture of such export goods. While Notification No. 40/2001-Central Excise (N.T.), dated 26-6-2001 as amended deals with details provisions for rebate on finishing goods, Notfn. No. 41/201-C.E. (N.T.) as amended deals and provides the detailed procedural provisions for input stage rebate also. Similar provisions and export relief existed for export on payment of duty and under bond in the erstwhile Rules 12 and 13 of Central Excise Rules. The fundamental objective of existing rules and the earlier ones is the same, i.e, to neutralise the duty element on the goods exported and hence no other interpretation denying the relief sought appears possible. Circular No. 129/40/95, dated 29-9-1995, para 1.5 of Chapter 8 of Part V of C.B.E. & C. Manual further leaves no room for any other interpretation."

(iv) Interpretation of word 'OR' occurring in Rule 18: The aforesaid discussion leads us to the only inevitable consequence which is this: the word 'OR' occurring in Rule 18 cannot be given literal interpretation as that leads to various disastrous results pointed out in the preceding discussion 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 and also to bring it at par with Rule 19.

23. We are conscious of the principle that the word 'or' is normally disjunctive and 'and' is normally conjunctive (See *Union of India v. Kamlabhai Harji wandas Parekh and Others* (1968) 1 SCR 463). However, there may be circumstances where these words are to be read as vice versa to give effect to manifest intention of the

Legislature as disclosed from the context.

24. Of course, these two words normally 'or' and 'and' are to be given their literal meaning in unless some other part of same statute or the clear intention of it requires that to be done. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and vice versa to give effect to the intention of the Legislature which is otherwise quite clear. This was so done in the case of *State of Bombay v. R.M.D. Chamarbaugwala* - (1957) 1 SCR 874 and while doing so, the Court observed as under:

"...Considering the nature, scope and effect of the impugned Act, we entertain no doubt whatever that the first category of prize competitions does not include any innocent prize competitions. Such is what we conceive to be the clear intention of the Legislature as expressed in the impugned Act read as a whole and to give effect to this obvious intention as we are bound to do, we have perforce to read the word "or" appearing in the qualifying clause after the word "promoter" and before the word "or" as "and". Well-known canons of construction of statutes permit us to do so. (See Maxwell on the Interpretation of Statutes, 10th edition, page 238)"

25. In *J. Jayalalitha v. Union of India* - (1999) 5 SCC 138, provisions of Section 3 of the Prevention of Corruption Act, 1988 empowers the Government to appoint as many special judges as may be necessary for such area or areas or for such case or group of case, as may be specified in the notification. Construing the italicised 'or' it was held that it would mean that the Government has the power to do either or both the things, i.e., the Government may, even for an area for which a special judge has been appointed, appoint a special judge for a case or group of cases.

26. Likewise, in *Mazagaon Dock Ltd. v. The*

Commissioner of Income Tax and Excess Profits Tax - (1959) 1 SCR 848, 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, hat 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.

(emphasis supplied)

59. In our view, in light of the decision of the Hon'ble Supreme Court in ***Spentex Industries Ltd. (supra)***, there is no double benefit availed by

the Petitioner and the Petitioner has correctly availed one benefit on the input side and one benefit on the output side.

60. Further, in our view, there is no express or specific bar under Rule 18 of the Central Excise Rules, 2002, read with Notification No.19/2004, to deny the rebate of duty paid on the exported goods on the ground that drawback has been claimed on inputs or accumulated Cenvat credit has been utilised for payment of excise duty on the exported goods.

61. Rule 18, which has been set out hereinabove, provides for rebate of duty paid on excisable goods subject to said conditions or limitations, if any, and fulfilment of procedure as may be specified by notification.

62. Notification No.19/2004 prescribes the conditions and limitations for claiming rebate of the whole of duty paid on excisable goods exported. On a perusal of these conditions, it is clear that Notification No.19/2004 nowhere provides that duty on the exported goods cannot be paid through accumulated Cenvat credit in order to claim rebate. Further, the said Notification does not bar the grant of rebate in case where duty drawback has been claimed in respect of inputs used in the exported goods.

63. Hence, in our view, there is absolutely no bar in law preventing a manufacturer/exporter from claiming rebate of duty on the exported goods on the output side as well as claiming drawback on the inputs on the input side.

64. In our view, the impugned order has erroneously held that the Petitioner has availed of double benefits. In the impugned Order, it is held that the definition of “drawback” in Rule 2(a) of the Drawback Rules of 1995 makes it clear that drawback is a rebate of duty on inputs used in the manufacture of exported goods. Further, the impugned Order states that Rule 18 of the Central Excise Rules, 2002, stipulates that in case of export of goods, the assessee shall be eligible for grant of rebate of duty on such excisable goods or on inputs used for manufacturing such excisable goods. It is held in the impugned order that since the drawback availed by the Petitioner in the present case is nothing but a rebate of duty on inputs, therefore, the rebate of duty on export of goods claimed by the Petitioner is incorrect. We are unable to agree with the said finding in the impugned order. In our view, the impugned order has completely conflated input and output side benefits. Drawback is an input side benefit granting to the Petitioner rebate of the duties/taxes embedded in the inputs purchased by it. Further, the Petitioner has claimed only output rebate under Rule 18 of the

Central Excise Rules, 2002 and has not claimed any input side rebate under the said Rule 18. In our view, there is absolutely no bar in law nor is there a double benefit for the Petitioner to claim drawback on inputs and output rebate of the excise duty paid on the exported goods. Our view is supported by the aforesaid decision of the Hon'ble Supreme Court in the case of ***Spentex Industries Ltd. (supra)*** where the Court has held that the assessee is entitled to claim benefits both on the input side and on the output side.

65. Further, the impugned Order has held that the Petitioner has tried to obtain undue advantage of export opportunity to encash additional amount lying idle in its Cenvat account. It has further held that there was no necessity for the Petitioner to pay duty on exported goods and thus, allowing rebate to the Petitioner would amount to granting it double benefit, which is not permissible. In our view, there is no requirement that output rebate under Rule 18 of the Central Excise Rules, 2002 can only be claimed when the output duty on the exported goods is paid in cash. In our view, there would be no reason for a businessman to make payment of the output excise duty in cash just to claim back the same amount as a rebate under Rule 18 of the Central Excise Rules, 2002. In our view, such an exercise would be against commercial prudence as it would simply block the working capital of a business for an undetermined amount of time for no benefit at all. In such

a scenario, the manufacturer/exporter would simply export under Rule 19 without payment of excise duty. In fact, the only time a businessman would ever choose to pay duty on exported goods is when he has accumulated credits which he can then claim back in cash as rebate. This is, in fact, the benefit extended to an exporter under Rule 18 of the Central Excise Rules, 2002. Hence, in our view, the aforesaid finding is incorrect and is liable to be set aside.

66. Further, in the impugned order, it has been held that the Petitioner had utilised Cenvat credit facility and therefore, had violated Condition No.12 (ii) of the Notification No.68/2007. Condition No.12 of Notification No.68/2007 is as follows:

*(12) 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 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 the goods under export, 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.

(emphasis supplied)

67. From a reading of the said Condition No.12, it is very clear that the expression “inputs used in the manufacture of the export product” in Condition 12 (i) refers to the very export transaction under consideration. It does not relate to every input used in the past by the assessee and which has not been used in the manufacture of the exported goods. The finding in the impugned Order, if carried to its logical end, would result in absurdity. As per the impugned Order, if the Petitioner has ever availed Cenvat credit at any point of time, whether for the particular export to which rebate relates or for any other unrelated transaction, the Petitioner cannot claim that no Cenvat facility has been availed by it, and, hence, is disentitled on account of Condition No.12(ii) of Notification No.68/2007. In our view, such an interpretation runs totally contrary to the export scheme as well as the law laid down by the Hon’ble Supreme Court in ***Spentex Industries Ltd. (supra)***, which clearly states that there should be no input or output embedded tax in an export transaction. In our view, a correct interpretation of Condition 12 is

that no Cenvat credit should be availed in relation to the inputs used in the manufacture of the very exported goods for which rebate has been claimed. Since the Petitioner has not availed of Cenvat credit in relation to the inputs used in the manufacture of the very exported goods for payment of duty, it would be entitled to rebate as per the terms of Rule 18 of the Central Excise Rules, 2002.

68. As far as the judgement of this Court in *Kunal Houseware Private Limited* (supra) relied upon by the Respondents is concerned, the said judgement is on the provisions of IGST Act and the CGST Act, and is not applicable to the facts of the present case, especially since the very provisions involved in the present case have been interpreted by the Hon'ble Supreme Court in the case of *Spentex Industries Ltd.* (supra).

69. As far as the judgement of the single Judge of the Madras High Court in *Raghav Industries Ltd.* (supra) is concerned, Mr.Sridharan is right in submitting that the same cannot be relied upon as it has been set aside by the judgement of the Division Bench of the Madras High Court in *Raghav Industries Ltd.* (supra). Further, the learned Single Judge of the Madras High Court whilst dealing with the judgement of the Hon'ble Supreme Court in the case of *Spentex Industries Ltd.* (supra) has held as under:

“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 Sections 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.”

70. In our view, the aforesaid interpretation, of the judgement of the Hon'ble Supreme Court, by the Madras High Court, is erroneous. The Madras High Court has sought to distinguish the judgement of the Hon'ble Supreme Court in ***Spentex Industries Ltd. (supra)*** on the ground that both the input and output side benefits in the said case fall under Rule 18 of the Central Excise Rules, 2002 while in the case before the Madras High Court, the issue involved was covered under two different statutes i.e. under the Drawback Rules of 1995 and under Rule 18 of the Central Excise Rules, 2002.

71. We respectfully disagree with the said interpretation of the Madras High Court. In our view, the decision of the Hon'ble Supreme Court

in *Spentex Industries Ltd. (supra)* clearly lays down that the assessee is entitled to both input side benefit and output side benefit. In our view, it makes no difference whether the said benefits are claimed under one statute or under different statutes.

72. For all the aforesaid reasons, the following orders are passed:-

a) The present Writ Petition is allowed in terms of prayer clause (a) thereto, which reads as under:

a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other Writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the impugned Order No. 531-827/2021-CX (WZ)/ASRA/MUMBAI dated 30.11.2021 issued on 3.12.2021 (Exhibit A) passed by Respondent No. 2.

b) The Orders-in-Original set out in Exhibit 'D' to the Petition stand reinstated.

c) As a consequence, the Show Cause Notices set out in Exhibit 'F' to the Petition do not survive and stand closed.

d) Rule is made absolute in the aforesaid terms.

e) In the facts and circumstances of the case, there will be no order as to costs.

73. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]