



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

1.D.B. Civil Writ Petition No. 2835/2021

M/s Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist - Alwar, Rajasthan - 301707 Through R.k. Jha, Agm

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 110001

2. Assistant Commissioner, Central Excise Division, Bhiwadi - II, Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi, Alwar - Rajasthan.

----Respondents

Connected With

2.D.B. Civil Writ Petition No. 11511/2020

M/s. Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist. - Alwar, Rajasthan- 301707

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi- 110001

2. Assistant Commissioner, Central Excise Division, Bhiwadi-Ii Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi Alwar - Rajasthan

----Respondents

3.D.B. Civil Writ Petition No. 2861/2021

M/s. Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist. - Alwar, Rajasthan - 301707 Through R.k. Jha, Agm.

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And



Additional Secretary To The Government Of India,
Department Of Revenue, Ministry Of Finance, North
Block, New Delhi - 110001

2. Assistant Commissioner, Central Excise Division, Bhiwadi
- Ii, Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi,
Alwar - Rajasthan

----Respondents

4.D.B. Civil Writ Petition No. 2862/2021

M/s. Balkrishna Industries Ltd., A-300-305 And E-306-313,
Riico Industrial Area, Chopanki, Dist. - Alwar, Rajasthan -
301707 Through R.k. Jha, Agm.

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And
Additional Secretary To The Government Of India,
Department Of Revenue, Ministry Of Finance, North
Block, New Delhi - 110001

2. Assistant Commissioner, Central Excise Division,
Bhiwadi - Ii, Near Ashiana Bagicha, Alwar Bye-Pass
Bhiwadi, Alwar - Rajasthan

----Respondents

5.D.B. Civil Writ Petition No. 2863/2021

M/s Balkrishna Industries Ltd., A-300-305 And E-306-313,
Riico Industrial Area, Chopanki, Dist - Alwar, Rajasthan -
301707 Through R.k. Jha, Agm

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And
Additional Secretary To The Government Of India,
Department Of Revenue, Ministry Of Finance, North
Block, New Delhi - 110001

2. Assistant Commissioner, Central Excise Division,
Bhiwadi - Ii, Near Ashiana Bagicha, Alwar Bye-Pass
Bhiwadi, Alwar - Rajasthan.

----Respondents



6.D.B. Civil Writ Petition No. 2864/2021

M/s Balkrishna Industries Ltd., A-300-305 And E-306-313,
Riico Industrial Area, Chopanki, Dist - Alwar, Rajasthan -
301707 Through R.k. Jha, Agm

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 110001
2. Assistant Commissioner, Central Excise Division, Bhiwadi - Ii, Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi, Alwar - Rajasthan.

----Respondents

7.D.B. Civil Writ Petition No. 2865/2021

M/s Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist - Alwar, Rajasthan - 301707 Through R.k. Jha, Agm

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 110001
2. Assistant Commissioner, Central Excise Division, Bhiwadi - Ii, Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi, Alwar - Rajasthan.

----Respondents

8.D.B. Civil Writ Petition No. 2866/2021

M/s Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist - Alwar, Rajasthan - 301707 Through R.k. Jha, Agm

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of





India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 110001

2. Assistant Commissioner, Central Excise Division, Bhiwadi - Ii, Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi, Alwar - Rajasthan.

----Respondents

9.D.B. Civil Writ Petition No. 2867/2021

M/s. Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist. -Alwar, Rajasthan - 301707 Through R.k. Jha, Agm.

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi - 110001
2. Assistant Commissioner, Central Excise Division, Bhiwadi - Ii, Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi, Alwar - Rajasthan

----Respondents

10.D.B. Civil Writ Petition No. 11540/2020

M/s. Balkrishna Industries Ltd., A-300-305 And E-306-313, Riico Industrial Area, Chopanki, Dist. - Alwar, Rajasthan- 301707

----Petitioner

Versus

1. Union Of India, Through Principal Commissioner And Additional Secretary To The Government Of India, Department Of Revenue, Ministry Of Finance, North Block, New Delhi- 110001
2. Assistant Commissioner, Central Excise Division, Bhiwadi-Ii Near Ashiana Bagicha, Alwar Bye-Pass Bhiwadi Alwar - Rajasthan





----Respondents

For Petitioner(s) : Ms. Disha Bhandari through VC
For Respondent(s) : Mr. Siddharth Ranka through VC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

07/02/2022

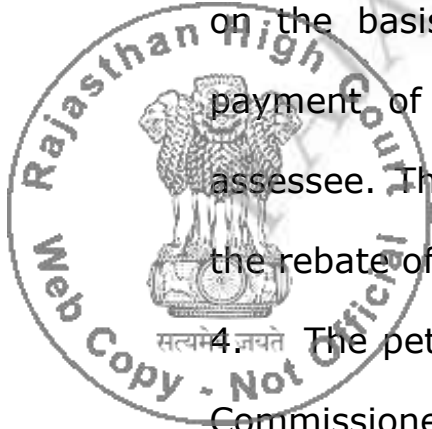
1. This group of petitions arise out of a common background. They have been heard together and are being disposed of by this common judgment.

2. D.B. Civil Writ Petition No.2835/2021 is treated as a lead case. Facts on record from the said case may be seen. The petitioner is a limited company and is engaged in the business of manufacturing of automobile tyres and tubes falling under Chapter 40 of First Schedule to the Central Excise Tariff Act, 1985. For the purpose of manufacturing tyres the petitioner would utilise indigenous as well as imported raw materials. In order to avail the benefits of duty free imports the petitioner had obtained advance authorisations and imported goods without payment of duty in terms of notification dated 11.09.2009. For certain locally procured inputs the petitioner would apply and obtain invalidation letters from the Directorate General of Foreign Trade by getting the relevant advance authorisation cancelled for the quantity of goods invalidated.

3. The petitioner made a rebate claim under rule 18 of Central Excise Rules, 2002 (for short 'the rules of 2002') for a sum of Rs.97.74 lacs (rounded off) before the Assistant Commissioner of



Central Excise. The Assistant Commissioner issued a show-cause notice on 09.02.2015 why such rebate claim should not be rejected. In the show-cause notice it was mentioned that upon examination of claim it appears that petitioner had exported goods and though no valid duty was payable on such exported goods the petitioner paid the duty from inadmissible CENVAT credit availed on the basis of inputs supplied against invalidation letters on payment of duty which was lying in the CENVAT account of assessee. The assessee had thus paid duty deliberately to claim the rebate of the same.



4. The petitioner opposed the show-cause notice. The Assistant Commissioner allowed the rebate accepting the stand of the assessee upon which the department preferred an appeal. Commissioner of Appeals by his order dated 31.10.2017 allowed the appeal. He was of the opinion that in terms of the notification No.96/2009 of the Customs Department dated 11.09.2009 read with notification No.44/2001 dated 26.06.2001 read with Foreign Trade policy the advance licence holder is required to export goods without payment of duty. In the present case the petitioner paid the duty though the same was not payable. It was done deliberately to encash the CENVAT credit which may have been built up in the account. The advance licence scheme does not allow such mischief.

5. The petitioner preferred revision petition against the said appellate order. The revisional authority by the impugned order dated 08.01.2020 dismissed the revision petition making following observations:-

"10. The applicant has paid an amount as central excise duty on the export goods from their



cenvat account. The said amount does not assume the character of duty as defined under Rule 2 (e) of Central Excise Rules 2002 wherein 'duty' means "the duty payable under Section 4 of the Central Excise Act".

11. CBIC vide circular no.203/ 37/96-cx dated 26.04.96 has stated that AR-4 (now ARE-1) value of excisable goods should be determined under Section 4 of Central Excise Act, 1944. Any amount paid in excess of duty liability on one's own volition cannot be treated as duty. It has to be treated simply a voluntary deposit with the Government which is required to be returned to the applicant in the manner, in which it was paid, as the said amount cannot be retained by Government without any authority of law.

Hon'ble Punjab and Haryana High Court in the case of Nahar Industries Enterprises Limited Vs. Union of India (2009 (253) ELT 22 (P&H) has held that "*Assessee is not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty.*"

12. Government holds that the applicant is not entitled for rebate under Rule 18 of Central Excise Rules, 2002 on the impugned goods exported under Advance License Scheme in terms of notification 42/2001-Central Excise (N.T.), 44/2001-CE (NT) both dated 26.06.2001 read with notification 96/2009-Cus dated 11.09.2009. Accordingly the order of Commissioner (Appeals) is upheld and revision applications filed by the applicant are rejected."

6. Appearing for the petitioner learned counsel Ms. Disha Bhandari contended that the excise rules envisage either rebate or duty free procurement of the raw materials which are used for manufacturing export product. In the present case the petitioner opted for procedure under rule 18 of the rules of 2002 and made a rebate claim after payment of duty. Even if it is assumed that no duty was payable, the department cannot retain the petitioner's duty which has already been paid. She drew our attention to the decisions of various courts holding that payment of duty through CENVAT credit is as good as duty paid. The CENVAT rules make no



distinction between a case where duty is paid through cash or through CENVAT credit adjustments. She therefore submitted that appellate and revisional authorities have committed serious error in rejecting the rebate claim.

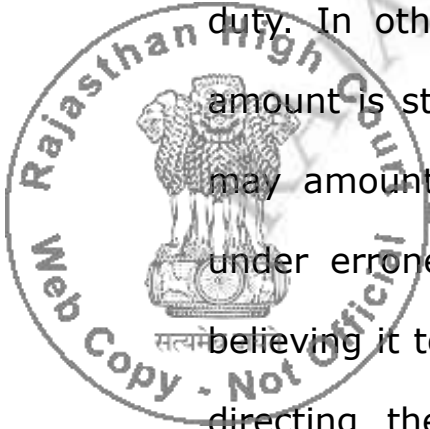
7. Learned counsel appearing for department opposed the petitions contending that it is indisputable that petitioner was not required to pay duty on the exports made despite which the duty was paid. This was done through encashment of CENVAT credit lying in the account of the petitioner. The rebate claim was later on made to encash such CENVAT credit which was otherwise not encashable. The authority has therefore correctly examined the situation and dismissed the petitions.

8. Having heard learned counsel for the parties and having perused the documents on record, it appears quite undisputable that the petitioner had availed the facility of importing goods under advance licences without payment of duty. In some cases such advance licence were invalidated in order to procure raw material duty free from local manufacturers. Raw materials so procured were utilised for manufacturing the export goods. At that time the petitioner availed the CENVAT credit and later on claimed the rebate under rule 18.

9. As is well known, the rules of 2002 recognise two regimes for equalising excise duty element on raw material used for export of course subject to the conditions specified by the Government of India. Under rule 18 the Central Government may by notification grant rebate on duty paid on excisable goods which are used for production of export goods. Under rule 19 a manufacturer can procure such goods without payment of duty on a condition that same would be used for manufacture of goods which would be



exported. Both these rules 18 and 19 of the rules of 2002 concern payment of duty. Under Rule 18 there would be rebate of duty paid. Under rule 19 the duty which is otherwise payable is waived subject to condition of using raw material for manufacturing export goods. Neither of these rules relate to an amount which is deposited with the Government but which is not in the nature of duty. In other words if there is no duty element involved and amount is still paid, it does not partake the character of duty. It may amount to depositing a certain sum with the Government under erroneous belief. Had the petitioner deposited such sum believing it to be the duty payable, we would have still considered directing the Government of India to refund the same. The Government of India has no authority to retain the sum which is collected without authority of law. If a person deposits such sum under mistake he may also claim refund thereof and if Government of India intends to withhold the same, the same may be branded as withholding the amount without authority of law. However in the present case the situation is different. The amount was not deposited in cash but by encashing CENVAT credit. We are conscious that the judgments have made observations to the effect that payment of duty through CENVAT facility is as good as duty paid. However as observed earlier, it is not an instance of duty being paid. It is an instance of depositing certain sum with Government of India which was not payable. We therefore are in agreement with the view of appellate and revisional authorities that by this means the petitioner cannot claim refund of the amount which was offered through CENVAT credit. As is well known unused CENVAT credit can be encashed subject to certain terms and conditions. The petitioner cannot encash the CENVAT





credit without following the procedure for making application and inviting a scrutiny whether the terms and conditions under which such unused CENVAT credit can be encashed are satisfied.

10. In the result petitions are dismissed.

(SUDESH BANSAL),J

(AKIL KURESHI),CJ

KAMLESH KUMAR/21-28, C-1 & 2



सत्यमेव जयते