

REGISTERED  
SPEED POST



F.No. 198/179-186/2012  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6th FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue... 5/1/18.

Order No. 03-10/2018-CX-dated 03-01-2018 of the Government of India, passed by Shri R. P. Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject: Revision Applications filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 86-93/CE/APPL/CHD-II/2012 dated 07/03/2012 passed by Commissioner of Central Excise(Appeals), Chandigarh - II

Applicant: The Commissioner of Central Excise, Chandigarh

- II -

Respondent: M/s. Ind-Swift Laboratories Ltd.

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**ORDER**

A revision application No.198/179-186/2012-R.A. dated 12.06.2012 is filed by the Commissioner of Central Excise, Chandigarh-II (hereinafter referred to as the applicant) against the Order-In-Appeal No. **86-93/CE/Appl/CHD-II/2011** dated 07.03.2012, passed by the Commissioner of Central Excise (Appeals), Chandigarh-II, with regards to Orders-in-Original NO. R-1804-1811/DB/2010 dated 16.11.2010, passed by the Deputy Commissioner, Central Excise Division, Derabassi, against M/s Ind-Swift Laboratories Limited (hereinafter referred to as the respondent).

2 The brief facts of the case are that the respondent manufactured menthol (CETH 29061100), exported under Notification No. 4/2006 dated 01.03.2006, as amended vide Notification No. 4/2008 dated 01.03.2008), and filed rebate claims for Central Excise duty paid on inputs as per provisions of Notification No. 21/2004-CE(NT) dated 06.09.2004. The respondent had initially filed declaration on 01.06.2009 and sought permission to manufacture export goods in terms of said Notification which was subsequently granted by the Division Office, Derabassi, vide C.No. V(Misc)Rebate/Notn.21/2004/DB/2/2009/2747 dated 18.08.2009 fixing therein input-output norms as 1.250 kg DMO (Deterpenated Mentha Oil) :1.00 kg Menthol on the basis of their declaration that mother liquor would not be processed/recycled for obtaining the menthol and would be cleared as de-mentholized oil terpenelss. On claiming the rebate of duty, the Deputy Commissioner, Central Excise Division, Derabassi, sanctioned the rebate claims vide his Orders-In-Original R-1804-1811/DB/2010 dated 16.11.2010. Subsequently a team of preventive officers of the Central Excise Commissionerate, Chandigarh-II, visited the factory premises of the respondent on 09.02.2011 to verify the generated wastage. The Deputy Manager (Production) and Deputy Manager (Commercial) of the applicant in their statement admitted during the enquiry that

as on date they did not have any stock of mother liquor or any type of menthol waste lying in their factory as all the quantity of mother liquor generated during the course of manufacture of menthol since 2008 had been further reprocessed/recycled within their

factory to obtain menthol. Soon after the above visit of the officers, the respondent voluntarily requested the jurisdictional Assistant Commissioner, vide their letter dated 17.02.2011 that rebate be sanctioned as per the norms of 1 kg de-terpinated mentha oil to 1 kg menthol and accordingly the norms were re-fixed as 1.000kg of de-terpinated mentha oil to 1 kg menthol vide Division's letter C.No. V(Misc) Rebate/Notif.21/04/DB/2/2009/1121 dated 04.03.2011.

3. In the light of above facts and revision of input output ratio, the department filed appeals against the above Order's-in-Original to the Commissioner (Appeals) to set aside the impugned Orders-in-Original on the ground that the respondent had earlier mis declared that the waste obtained would not be reprocessed/recycled further to obtain menthol which led to wrong fixation of input output norm ration of 1.25 :1 in place of 1.00:1 by the Division office and thereby the applicant had fraudulently taken more rebate of duty in cash to the extent of 20%. However, the Commissioner (Appeals), vide his common Order-In-Appeal No. 86-93/CE/Appl/CHD-II/2011 dated 29.02.2012, upheld the Order-In-Original and rejected the appeals filed by the revenue. The Revenue filed the above referred Revision Application dated 29.02.2012 against the Commissioner (Appeal)'s above order which was disposed off by the Jt. Secretary of the Govt. of India by remanding the case back to the Commissioner (Appeals), Chandigarh, vide Order No.198/179-186/12- RA dt.15.01.2016, with a direction for fresh consideration of the case after taking into account the statements of the employees of the applicant etc. The above order of the Jt. Secretary was challenged by the respondent before the High Court of Punjab & Haryana at

Chandigarh, vide Civil Writ Petition No.22923 of 2016, mainly on the grounds that a Joint Secretary is of the level of the Commissioner (Appeals) only and, therefore, the Joint Secretary cannot revise the Order of The Commissioner (Appeals). This writ petition is disposed off by the Hon'ble High Court vide its Order dated 02/02/2017 in terms of the earlier decision of Punjab & Haryana High Court in the case of N.V.R Forgings vs. Union of India and others, passed in reference to C.W.P No.24967 of 2015. In the case of N.V.R. Forgings, the High Court set aside the similar order of the Joint Secretary to the Government of India on the same ground that the Order in Appeal and the Revisionary order cannot be passed by the officers of the same rank. However, liberty was granted to the Government to proceed afresh in accordance with the law but without prejudice to the right of the parties.

4. In compliance of the above mentioned order of the High Court, the Revision Application filed by the Revenue was taken up for fresh consideration and to provide an opportunity to the respondent and the applicant, personal hearings were offered on 13/10/2017, 07/11/2017 and on 21/11/2017. While the Asstt. Commissioner of Central Excise attended the Personal hearing on 13/10/2017 itself for the applicant, the respondent did not attend any of the earlier two hearings and finally the advocate of the respondent, Sh. Gurumurthy, availed the hearing on 21.11.2017. During the hearing Sh: Gurumurthy submitted written arguments dated 20.11.2017 and opposed the revision application. He also produced an Order dated 31.05.2017 of the Commissioner of Central Excise (Appeals), Chandigarh, observing that in the light of above stated order of the High Court the remand proceeding is closed at his level. Accordingly the respondent's first contention in their written submissions given during the personal hearing was that the revision application dated 12.06.2012 filed by the Commissioner of Central Excise, Chandigarh, is no more in

existence as the same was earlier disposed of by the Joint Secretary and her order has now been quashed by the High Court. The Order of the Commissioner (Appeals) dated 31.05.2017 is also relied upon by the respondent to buttress this argument. On merit the respondent has averred that Commissioner (Appeals)'s order dt.07.03.2012 is absolutely correct and revision application is not maintainable.

5. The Government has examined the entire matter afresh in the light of the above mentioned High Court's Order and the contentions of the respondent. But it does not agree with the respondent's first contention that the revision application of the Department is no more in existence. It is quite evident from the decision of the High Court in the respondent's case and in the case of N.V.R forgeries that the order of the Joint Secretary has been set aside for the reason that she and Commissioner (Appeals) are of the same rank. But the revision application filed by the department has not been set aside by the High Court in its orders. In fact the sum and substance of the High Court's orders are that the revision application filed by the department could not be disposed of by the officer of the rank of the Commissioner (Appeals) and its net effect is only that the revision application was not disposed of by the proper officer. As a result, the revision application remained intact since the Joint Secretary was not competent to deal with the said revision application. This position is further made clear by the High Court itself by recording a clear observation in the end of Para 9 of its order in the case of N.V.R forgeries that however liberties granted to the state to proceed afresh in accordance with law but without prejudice. As regards Commissioner (Appeals)'s order dated 31.05.2017 the Government finds that the said order is absolutely unwarranted as he did not have any pending proceeding relating to this matter after the High Court set aside the Joint Secretary's Order

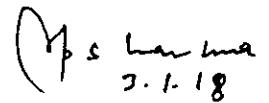
by its Order dated 2/02/2017 which was much before the Commissioner (Appeals) passed the above order.

6. As regards merit of Revision Application, it is manifest from the Commissioner (Appeals)'s order itself that the respondent submitted contradictory claims regarding recycling/sale of mother liquor which is generated out of manufacturing of Menthol Crystals. For example in Para 6 of the Order in Appeal dtd 07/03/2012 the Commissioner (Appeals) has noted from respondent's declaration with the department that the mother liquor is used for making Dementholised Oil. Further in the same para the Commissioner (Appeal) has mentioned that the respondent, vide their letter dated 29.02.2010 in reference to the Range Superintendent's letter dated 17 September'2010, informed the department that they are selling Mother Liquor as such under the description dementholised oil distilled/DMO last pich residue and it was specifically mentioned that mother liquor cannot be used for manufacture of menthol crystals. He further concluded that from the documentary evidences given by the respondent it is evident that mother liquor was used for manufacturing dementholised oil which was cleared under different names. But Commissioner (Appeals)'s conclusion is not only incompatible to the respondents' earlier claim vide their letter dated 29.12.2010 that they are selling mother liquor as such but is also supporting the departmental claim that actually no wastage was generated in any form while manufacturing the menthol oil/menthol crystal as ultimately entire inputs were converted into final products in the form of menthol oil or menthol crystals or mother liquor which were sold in the market. This finding is further supported by the statements of Sh. Ram Ashish Yadav and Sh. Vinod Rana, the deputy manager (production) and deputy manager (commercial) of the respondent respectively, who deposed that mother liquor was used in the factory to obtain menthol oil. But the

Commissioner (Appeals) has not considered the statements of these two managers and has rather discarded their version by observing that their statement is not corroborated by any evidence available on record even when the Commissioner (Appeal) himself has concluded that the mother liquor was used for manufacturing deterpinated menthol oil which was cleared under different names. On the contrary, the statements of the above two managers are fully corroborated by the respondent's own declaration dated 01/06/2009 that mother liquor is used for deterpinated menthol oil. It is further supported by even other facts that neither the respondent has proved nor the Commissioner (Appeals) has made out any case that any wastage is generated out of the manufacturing process undertaken by the respondent in this case. Thus it is evident that no wastage is produced and thereby there is no doubt that the respondent had declared higher quantity of inputs for producing the final products by showing generation of some wastage. This fact finally stands well established from the respondent's subsequent action also in as much as they requested jurisdictional Assistant Commissioner, vide their letter dated 17/02/2011, to sanction rebate of duty as per the norms of one kg deterpinated menthol oil to one kg menthol and deposited the differential rebate of duty amounting Rs. 22,68,916/- alongwith interest of Rs. 1,15,547 in lieu of excess Rebate of duty sanctioned by the Assistant Commissioner earlier on the basis of their earlier higher declaration of input-output ratio. The jurisdictional Assistant Commissioner has also accepted the revised declaration of input output ratio given by the respondent by their letter dated 17/02/2011 and fixed norm of 1 kg deterpinated mentha oil to 1 kg menthol vide his letter no V(Misc.)Rebate/Notifi21/04/DB/2/2009/1121 dated 04/03/2011. Above all, the respondent has not filed any appeal against the above letter of the jurisdictional Assistant Commissioner dated 04.03.2011 refixing the input output ratio. These actions of the respondent are unambiguous acceptance of the department's case.

But all these crucial facts of the case have been ignored by the Commissioner (Appeals) and he has set aside the Department's appeal mainly on the basis of earlier declaration of the respondent and its approval by the jurisdictional Assistant Commissioner overlooking subsequent development in the cases. Whereas the above discussed facts clearly reveal that subsequently the issue regarding fixation of input output ratio has been settled by the respondent itself by revising the earlier input output ratio, by depositing excess amount of rebate of duty availed by them and by not filing any appeal against re-fixation of input output ratio. Accordingly earlier input output ratio had ceased to be relevant in the wake of above discussed subsequent development in the case and the Commissioner (Appeal) should have allowed the Department's appeal against the order of the Assistant Commissioner particularly when the dispute regarding input output ratio had been resolved by the respondent themselves. Considering all these facts the Government finds that the Commissioner (Appeals) has committed an error by ignoring the above discussed vital material and by rejecting the Department's appeal against the jurisdictional Assistant Commissioner's Order in Original.

7. Accordingly, the Government sets aside the Commissioner (Appeals) order 86-93/CE/App/CHD-II dated 07.03.2012 and allows the Revision application filed by the revenue.

  
3.1.18

(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Central Excise,  
Chandigarh – II, C.R. Bldg., Plot No. 19,  
Sector – 17 –C, Chandigarh – 160 017.



G.O.I. Order No. 03-10/18-Cx dated 3-01-2018

Copy to:-

1. M/s. Ind-Swift Laboratories Ltd., Vill. Bhagwanpura, Barwala Road, Derabassi, Mohali(Pb.)
2. Commissioner of Central Excise (Appeals), Central Excise, C.R. Building, Plot No. 19, Sector 17 – C, Chandigarh
3. Deputy Commissioner, Central Excise Division, Sadashiv Complex, Ambala, Chandigarh Road, Derabassi.
4. PA to AS(Revision Application)
5. Guard File
6. Spare Copy

ATTESTED

3.1.2018

(Debjit Banerjee)  
Sr. Technical Officer (R.A.)