

**REGISTERED
SPEED POST**



F.No. 195/544-553,554/11 -RA
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.....4/1/2013.....

ORDER NO. 1-11/13-Cx DATED 03-01-2013 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF
INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : REVISION APPLICATION FILED,
UNDER SECTION 35 EE OF THE CENTRAL EXCISE,
1944 AGAINST THE ORDER-IN-APPEAL No.
42-51 & 52/CE/Appeal/Noida/11 Dated 25-02-2011
passed by Commissioner of Central
Excise (Appeals), Noida.

APPLICANT : M/s. Marol Overseas Ltd.,
Gautam Budh Nagar, UP.

RESPONDENT : Commissioner of Central Excise & Service Tax,
Noida.

ORDER

These revision applications are filed by M/s. Marol Overseas Ltd., Gautam Budh Nagar, UP against the Orders-in-Appeal Nos. 42-51 & 52/CE/Appeal/Noida/11 Dated 25-02-2011 passed by Commissioner of Central Excise (Appeals), Noida with respect to Orders-in Original passed by the Assistant Commissioner of Central Excise, Division-IV, Noida.

2. Brief facts of the case are that the applicant filed various claims of rebate of duty paid on export products under rule 18 of the Central Excise Rules, 2002. The rebate claims were initially partly sanctioned to the applicant in as much as amount of Rs. 14,32,685/- was denied to be rebated in the form of cash. Out of total rejected sum of Rs. 14,32,685/-, amount of Rs. 12,09,275/- was disallowed for the reasons that original/duplicate copies of AREs-1 could not be filed along with relevant proof of export. Remaining amount of Rs. 2,23,410/- was allowed to be credited in Cenvat account of the applicant. The original authority ordered for re-credit in Cenvat account on the ground that transaction value in impugned cases is the lowest of three FOB values given in impugned AREs-1, Shipping Bills and BRCs.

3. Being aggrieved by the said Orders-in-Original, applicant filed appeals before Commissioner (Appeals), who modified the impugned Orders-in-Original in as much as rebate claims to the extent of Rs. 12,09,275/- held to be admissible to the applicant. The Commissioner (Appeals), however, rejected the plea of the applicant to allow rebate in cash for remaining amount of Rs. 2,23,410/-.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The refund of Rs. 2,23,410/- has been incorrectly allowed for re-credit in the Cenvat Credit account. The applicants in fact paid duty on the transaction value which was the value at the port of export and the applicants had

borne the cost & expenses up to that point of time. This value was duly assessed on AREs-1 by the proper officer and the same was not challenged by the rebate sanctioning authority. Likewise, the duty was paid on the time, date and place of removal from the factory gate and even if this value was less realized due to fluctuation of the foreign exchange rate, the rebate was liable to be allowed for the entire duty paid on the transaction value. Therefore the action of the adjudicating authority was not sustainable under law and the rebate was liable to be sanctioned in cash.

4.2 The CBEC has clarified in its circular No. 510/06/2000-Cx dt. 03-02-2000 issued from F. NO. 209/29/00-Cx-6 that the rebate sanctioning authority is not required to reassess the value for the export and the value assessed by the range officer on ARE-1 at the time of export has to be accepted. Further, this duty is also not affected by the less realization of export proceeds owing to exchange rate fluctuation and the duty and value has to be on the date, time & place of removal and the exchange rate on that date alone would be applicable.

4.3 The applicants has relied upon following case decisions in this regard:

- i) Jewel Packaging Pvt. Ltd. Vs CCE, Bhavnagar, 2010 (253) ELT 622 (Tri-Ahmd.)
- ii) CCE, Bangalore Vs. Maini Precision products Pvt. Ltd., 2010 (252) ELT 409 (Tri-Bang.)

4.4 Values declared on the ARE-1s and the Invoice issued under Rule 11 of the Central Excise Rules, 2002 were the true transaction values as per section '4' of the Central Excise Act, 1944. These values were self assessed and examined by the assessing officer namely the Superintendent of Central Excise of the jurisdictional Range and this transaction value is not re-assessable by the rebate sanctioning authority. The rebate sanctioning authority has to simply examine the rebate and the duty paid nature and he had no business in going in to transaction value once it has been assessed and examined by range officer and the same was not objected

upon. In all the cases, the transaction value comprised of the value up to the port of export.

4.5 In cases where the value realized as seen in the BRCs is increased or decreased due to exchange rate fluctuation, it would not affect the transaction value and the duty paid thereon and the rebate claim has to be paid in full as the duty was paid on the specific date on the transaction value and the exchange rate fluctuation would not impact the rebate claim in any case.

5. Personal hearing was scheduled in this case on 10-10-2012 & 06-12-2012. Shri Rakesh Sharma, Assistant Manager (Customs) attended hearing on 06-12-2012 on behalf of the applicant, who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. On perusal of records, it is observed that applicant has contested the impugned Order-in-Appeal for denial of cash rebate of Rs. 223410. Applicant has contended that they have paid duty on the transaction value of the goods. The FOB value declared on Shipping Bill is exactly same. The difference in BRC value is due to fluctuation in foreign exchange rate and not due any inclusion of ocean freight in the value. Government notes that the original authority has not given any finding/reasoning for choosing lowest of the values mentioned in AREs-1, Shipping Bills and BRCs. Such conclusion without any basis is not proper and legal. Once, port of export is not disputed as 'place of removal', and sale contract on FOB basis there is no reason to reject the ARE-I/FOB value as transaction value.

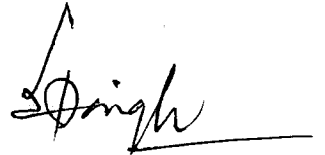
8 Government further observes CBEC vide Circular No. 510/06/2000-Cx dt. 03-02-2000 has clarified that there is no question of re-quantifying the amount of rebate by applying some other rate of exchange prevalent subsequent to the date on which the duty was paid. As such, the rebate amount need not to be changed on

account of lower realization in BRCs due to exchange rate fluctuation. The contention of the applicant that difference in said values is due to fluctuation in exchange rate has not been considered by lower authorities.

9. In view of above position, Government modifies orders of Commissioner (Appeals) in terms of discussions above and accordingly, remands the case back to original to verify and determine whether the difference in said values is due to Foreign exchange rate fluctuation and if so, the said rebate claim will be sanctioned to the applicant in accordance with law. A reasonable opportunity of hearing will be afforded to the party.

10. Revision applications disposed off in above terms.

11. So, Ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Marol Overseas Ltd.,
A-11, Phase-II, Noida,
Gautam Budh Nagar, UP

ATTESTED

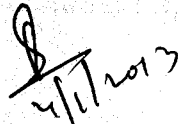

Joint Secretary to the Govt. of India
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 1-11/13-Cx dated 03-01-2013

Copy to:

1. The Commissioner of Central Excise & Service Tax, Noida, C-56/42, Sector-62, Noida, UP.
2. The Commissioner of Central Excise (Appeals), 4th Floor, Noida, C-56/42, Sector-62, Noida, UP.
3. The Assistant Commissioner, Central Excise, Noida, C-56/42, Sector-62, Noida, UP.
4. Shri Rakesh Sharma, Assistant Manager, C/o. M/s. Marol Overseas Ltd., A-11, Phase-II, Noida, Gautam Budh Nagar, UP
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy

ATTESTED


4/1/2013

(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)