

REGISTERED
SPEED POST



F.No. 198/458-460/2011—R.A.
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.....

Order No. 106-108/2018-CX dated 6-2-18 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 Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No.84-86/CE/LDH/09 dated 29/3/2011 passed by the Commissioner of Customs and Central Excise (Appeals), Chandigarh.

Applicant : Commissioner of Central Excise, Ludhiana

Respondent : M/s Sundesh Springs Pvt. Ltd.
M/s Girnar Impex Ltd.
Sh. Adishwar Jain, MD of M/s Sundesh Springs Pvt. Ltd.

ORDER

A Revision Application No. 198/458-460/2011-R.A. dated 12/7/2011 is filed by Commissioner of Central Excise, Ludhiana (hereinafter referred to as the applicant) against order-in-appeal no. 84-86/CE/LDH/2011 dated 29/3/11, passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh.

2. The brief facts leading to the present proceeding are that M/s Sundesh Spings Pvt. Ltd., Ludhiana, (hereinafter referred to as the first respondent) claimed rebate of duty of Rs. 44,40,546/- against the goods manufactured by them and exported by M/s Girnar Impex Limited, Ludhiana, a merchant exporter, (hereinafter referred to as the second respondent) and the same was sanctioned by the original adjudicating authority. Subsequently the Directorate of Revenue Intelligence raided the business and residential premises of these two respondents and it was revealed that the first respondent was engaged in fraudulent availment of Duty Entitlement Passbook (DEPB) credits by resorting to mis-declaration of value and description of export goods. It was also found during investigation that the respondents had availed CENVAT Credit on the strength of mere paper transactions without any actual receipt of inputs. Accordingly a recovery proceeding under Section 11A was initiated against the first respondent and after holding that rebate of duty had been erroneously granted its recovery along with interest was ordered vide Order-in-Original No. 40/CE/ADC/Ldh/09 dated 04/05/2010. Penalty was also imposed on all the three respondents. The respondents filed appeals before Commissioner (Appeals) who allowed their appeals vide the above order dated 29/3/11 on the ground that there is no allegation in the Show Cause Notice or Order-in-Original that the CENVAT Credit utilized for

discharge of duty on export goods was not available with the applicant or had been fraudulently availed. Being aggrieved by the said order of the Commissioner (Appeals), the applicant filed the subject Revision Application before the then Joint Secretary (RA), who vide Order No. 445-447/2013-CX dated 30/05/13, set aside the Commissioner (Appeals)'s order and restored the orders-in-original. Being aggrieved, the respondents questioned the vires of the above order before the Hon'ble High Court of Punjab and Haryana in Writ Petition on the ground that the JS (RA) is not competent to decide the revision application as Joint Secretary is equal to the Commissioner (Appeals) only. Allowing the Writ Petition, the Hon'ble Court set aside the Order of the Joint Secretary, but gave a liberty to the Government to decide the revision application afresh. Accordingly, this revision application was taken up for fresh decision filed by the applicant department mainly on the ground that the goods exported could not be considered as duty paid as the duty was paid from inadmissible CENVAT Credit and, therefore, the rebate of duty wrongly sanctioned to the respondent and was liable to be recovered along with interest and penalties on respondents.

3. Personal hearing was granted on 21/12/2017 and 11/01/2018. But no one appeared for the applicant as well as the respondent and no further request for any other date for personal hearing was also received from them from which it is implied that they are not interested in availing personal hearing. Therefore this matter is taken up for a decision on the basis of revision application and other available relevant records.

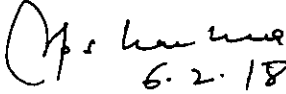
4. On examination of the revision application in the light of all relevant records, the Government finds that the Commissioner (Appeals) has allowed the respondent's appeal mainly on the ground that availability of

the CENVAT credit with the first respondent for payment of duty on the exported goods has not been questioned in the present proceeding from which it is implied that the respondent has paid proper duty from the available CENVAT credit. However, the Government finds that the payment of duty is a matter of fact and it cannot be available with the respondent merely for technical reason that no issue regarding non-admissibility of CENVAT credit is raised in the Show Cause Notice or in the Order-in-Original it is noticed that the entire order-in-original has been devoted to the core issue that the first respondent did not procure any inputs on actual payment of duty and even the declared goods were not actually exported. Therefore the Commissioner (Appeals)'s observation that the availability of the CENVAT credit with the first respondent has not been doubted in the Show Cause Notice or Order-in-Original is found to be completely misplaced. In fact, the investigation against the respondents was mainly directed to find out wrong availment of export incentives and wrong availment of CENVAT credit by the applicant with ulterior motive of availing wrong benefits and it has been fairly gathered during the investigation conducted by DRI, a reputed intelligence agency, that the first respondent had not procured duty paid inputs so as to be eligible for availing CENVAT credit for its further utilization for payment of duty on the exported goods. Non-procurement of duty paid inputs and non-supply of duty paid inputs are candidly admitted by Sh. Adish Jain, Managing Director of the first respondent and Sh. Prabhjot Singh, Proprietor of M/s S. P. Industrial Corporation, Ludhiana, who issued the cenvatable bills/invoices. Further, non-manufacturing of alloy steel forgings or other like products is admitted by Sh. Rajesh Chopra, Production Supervisor of the first respondent, sh. Raghveer Singh Dhiman, Factory Manager of the

first respondent, Sh. Davinder Singh Narang, the Partner in M/s Simran Bright Bars, who carried out job work for the first respondent, Sh. Rajesh Lakhanpal, Computer Operator with M/s Girnar Impex Ltd. (second respondent) and Sh Amarjeet Singh, Accounts Manager in the firms of Sh. Adish Jain (third respondent) in their various statements whose details have been elaborated in the order-in-original. The veracity of the statements of the above persons has not been challenged by the respondents before the Deputy Commissioner or the Commissioner (Appeals) in his order. In fact, the point regarding non-questioning of availability of CENVAT credit in the Show Cause Notice was not raised by the respondents before the Deputy Commissioner in reference to the Show Cause Notice issued to them for recovery of rebate of duty and they did not furnish any defence reply. From the statements of the above persons and others as detailed in the order-in-original, it is fairly made out that the first respondent neither procured duty paid inputs for availing legitimate CENVAT credit nor manufactured the alloy steel which is claimed to have been exported by the respondents. In reference to the revision application filed by the applicant also, the respondents have not come forward with any written or verbal explanation regarding non-procurement of duty paid inputs and export of alloy steel forgings. From these facts it becomes absolutely clear that the first respondent did not have validly earned CENVAT credit balance and the duty on the exported goods was paid from fraudulently availed CENVAT credit only which cannot be considered as proper payment of duty by any legal yardstick. This fact of non-availability of legitimate CENVAT credit with the first respondent is not refuted by the Commissioner (Appeals) also in his order in the light of DRI's investigation and Deputy Commissioner's order-in-original and he has not stated

anywhere that the first respondent had paid duty on the exported goods from properly availed CENVAT credit. Since in the present proceeding the issue is regarding admissibility of rebate of duty on the exported goods, the Government is required to see only whether the first respondent had paid proper duty of excise or not and since in the Order of the Deputy Commissioner it has been prima facie made out that the first respondent did not have balance of properly earned CENVAT credit at all, the Government is convinced that the rebate of duty was erroneously granted earlier. Hence, the order dated 04/05/2010 of the Deputy Commissioner passed with a direction to pay rebate of duty along with interest should not have been set aside merely on the technical ground that availability of CENVAT credit was not questioned in this case before ordering recovery of rebate of duty. Considering these facts, the Government finds that the Commissioner (Appeals) has gone beyond the scope of the order-in-original while allowing the appeal of the respondents.

5. In view of the above discussion, the Commissioner (Appeals)'s order is set aside and the revision application is allowed.


6.2.18

(R. P. Sharma)

Additional Secretary to the Government of India

The Commissioner of Central Excise,
Ludhiana
Central Excise House,
Rishi Nagar,
Ludhiana.

G.O.I. Order No. 106-108/18-Cx dated 6-2-2018

Copy to:-

1. M/s Sundesh Springs Pvt. Ltd., D-138, Focal Point, Phase-V, Ludhiana
2. M/s Girnar Impex Limited, K-201, Kismat Complex, G.T. Road, Millerganj, Ludhiana.
3. Sh. Adishwar Jain, Managing Director, Sundesh springs Pvt. Ltd., D-138, focal Point, Phase-V, Ludhiana
4. Commissioner (Appeals), Customs & Central Excise, Chandigarh-II, Central Revenues Building, Plot No. 19, Sector-17 C, Chandigarh.
5. PA to AS(Revision Application)

- ✓6. Guard File
7. Spare Copy

Ndm
6/2/18

NIRMALA DEVI
(Section officer)
(Revision Application unit)
