

REGISTERED
SPEED POST



F.No.195/668/2011-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...28/8/13.....

ORDER NO. 1085/13-Cx DATED 28-8-2013 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 Act, 1944 against the orders-in-appeal
No. PKS/71/BEL/11 dated 15.07.2011 passed by
Commissioner of Central Excise (Appeals) Mumbai-
III, Mumbai Zone-II

APPLICANT : M/s Pragati Electricals Pvt. Ltd. , Plot No. R-230,
TTC, MIDC, Rabale, Navi Mumbai – 400701

RESPONDENT : Commissioner of Central Excise, Belapur
Commissionerate

ORDER

This revision application is filed by M/s Pragati Electricals Pvt. Ltd. , Plot No. R-230, TTC, MIDC, Rabale, Navi Mumbai – 400701 against the order-in-appeal No. PKS/71/BEL/11 dated 15.07.2011 passed by Commissioner of Central Excise (Appeals) Mumbai-III, Mumbai Zone-II with respect to order-in-original No. 70/Wagle-II/2010-11 dated 31.03.2011 passed by DCCE Wagle-II Division Mumbai-III Commissionerate.

2. The applicants are engaged in the manufacture of excisable goods falling under Chapter 85 of the first schedule to the Central Excise Tariff Act, 1985 and have been availing the facility of Cenvat credit. During the course of audit of the records for the period 2007-08, it was noticed that the applicants have availed credit of service tax paid on banking services rendered by SIBDI for the loan given for setting up expansion of project of the applicant's located at Murbad and not at Thane. The applicants on being pointed out have debited the differential amount of Rs. 36,462/- along with interest of Rs.9480/-. A show cause notice dated 20.12.2010 was issued to the applicants seeking to confirm and appropriate the amount so debited and also proposing to impose penalty under the provisions of Section 11AC of Central Excise Act, 1944 and Rule 15 of the Cenvat Credit Rules 2004. Vide the impugned order dated 31.03.2011, the differential duty along with interest was confirmed and penalty of equal amount have also been imposed upon the applicants.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government.

5. Personal hearing scheduled in this case on 8.8.2013 at Mumbai was attended by Shri Ashok Kurade DCCE Wagle-II on behalf of the respondent department who pointed out that the issue relating to confirmation of demand of wrongly availed cenvat credit

cannot be agitated before the Central Government under Section 35 EE of Central Excise Act 1944 since the appeal against such order-in-appeal lies before CESTAT. Nobody attended hearing on behalf of the applicant.

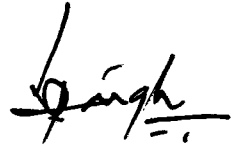
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. Government notes that in this case the demand of wrongly availed cenvat credit was confirmed along with interest by original authority. The said order-in-original is upheld by Commissioner (Appeals).

8. Government notes that the impugned order-in-appeal is not of the nature referred to in the first proviso to sub-section (1) of section 35 B of Central Excise Act 1944 and therefore as per provision of section 35 EE (1) of CEA 1944, no revision application lies before Central Government against said order-in-appeal . As such this revision application filed beyond jurisdiction is not maintainable. Applicant is at liberty to file appeal against impugned order-in-appeal before appropriate legal forum i.e. CESTAT.

9. The revision application thus stands dismissed as non-maintainable for lack of jurisdiction.

10. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Pragati Electricals Pvt. Ltd. ,
Plot No. R-230, TTC, MIDC, Rabale,
Navi Mumbai – 400701




(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आरए / Superintendent RA
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Revenue)
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 1085/13-Cx dated 20.8.2013

Copy to:

1. Commissioner of Central Excise & Customs, First Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai – 400 604
2. Commissioner of Central Excise (Appeals-I), Mumbai-III, Mumbai Zone-II , 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai – 400 604
3. The Assisant Commissioner of Central Excise, Wagle-II Division, Mumbai-III, 2nd Floor, New Central Excise Bldg., Wagle Industrial Estate, Thane - 400604
4. PA to JS(RA)
5. Guard File.
6. Spare Copy


(T. R. Arya)

Sub (Revision Application)