



REGISTERED

SPEED POST

F.NO. 198/249/11-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... 13/12/11

ORDER NO. 116 /2013-CX DATED 12-02-2013 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 ORDER-IN-
No. M-I/AV/402/2010 dated 15.12.2010 passed by
Commissioner of Central Excise (Appeals) Mumbai Zone-I
Mumbai

APPLICANT : The Commissioner of Central Excise & Customs, Mumbai-I

RESPONDENT : M/s Kamala Overseas, Mumbai

ORDER

This revision application is filed by CCE , Mumbai-I against the order-in-appeal No. M-I/AV/402/2010 dated 15.12.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I Mumbai with respect to order-in-original No. K-II /531-R/2007 (MTC) dated 22.08.2007 passed by ACCE (Rebate) Mumbai-IV. M/s Kamala Overseas Mumbai are the respondents in this case.

2. Brief facts of the case are that the respondent who are Merchant Exporters had filed five rebate claims for Rs.54,286/-, Rs.54,286/-, Rs.8,078/-, Rs.1959/- and Rs.1959/- totally amounting to Rs.1,20,568/- in the office of the Maritime Commissioner, Central Excise, Mumbai-IV on 11.06.2007. The said rebate claims were filed in respect of excisable goods, cleared from the factory of the manufacturer under the cover of ARE-1 and Central Excise Invoices of M/s Vera Pharma Pvt. Ltd. and M/s Hab Pharma & Research Ltd. The goods were purportedly exported from Air Cargo Complex, Sahar. It was observed that the corresponding Are-1 numbers were not endorsed on the relevant shipping bills and in case of ARE-1 No.05/06-07 dated 25.04.2006 the Batch No. KT-10 to KT-11 as appearing on ARE-1/Central Excise invoice differed from that mentioned as KF-10 on Customs Invoice. Therefore, the appellants were served with show cause notice dated 02.08.2007 seeking to reject the rebate claims of Rs.1,20,568/- in terms of Notification No. 19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944. The adjudicating authority vide order-in-origianl dated 22.08.2007 rejected all the five rebate claims amounting to Rs.1,20,568/- in accordance with the allegations in the show cause notice.

3 Being aggrieved by the said order-in-original, filed appeal before Commissioner (Appeals) who after considering all the submissions remanded the case to original

authority for processing the claims on the basis of corroborative documentary evidences submitted by exporter.

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

4.1 The order of Commissioner (Appeals) is contrary to the provisions of Section 35A(3) of the Central Excise Act, 1944. Consequent to the amendment to the said provisions brought about vide Finance Act, 2001, that came into effect from 11.5.2001, the power to remand the case to the adjudicating authority for a fresh consideration stands withdrawn.

4.2 CBEC has also clarified vide instruction issued under F.No.275/34/2006-CX.8A dated 18.02.2010 that the Commissioner (Appeals) do not have the power to remand and is bound to decide the case finally after necessary enquiry at his level.

4.3 The Commissioner (Appeals) should have decided the case finally as he does not have statutory power to remand. Therefore, Commissioner (Appeals) has erred by remanding the case, and his order-in-appeal deserves to be appealed against.

5. A show casue notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. The respondent filed written reply and mainly reiterated the submissions made before Commissioner (Appeals).

6. Personal hearing scheduled in this case on 20.12.2012 was attended by Shri Dharam Singh Meena, DCCE, Mumbai-I on behalf of the department who reiterated the grounds of revision application. Shri D.R. Shah Partner and Shri S.V. Parelkar, Consultant attended hearing on behalf of respondents and mainly submitted that order-in-appeal may be upheld.

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

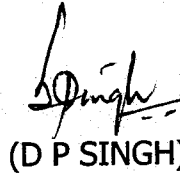
8. On perusal of records, Government observes that applicant department has challenged the impugned order-in-appeal only on one main ground that Commissioner (Appeals) has no power to remand the case consequent to amendment of Section 35 A(3) of Central Excise Act, 1944 vide Finance Act 2001 w.e.f. 11.05.2001 and therefore case was required to be finally decided at his level. In the instant case, original authority had rejected the rebate claims since the shipping bills did not contain the ARE-I form number and there was some difference in batch Nos in one case. There was no other objection. Commissioner (Appeals) has given a finding in para 5 of said order as under:-

"The appellants have produced adequate corroborative evidence in terms of FIRC invoice, shipping bill and the fact that ARE-Is themselves have been endorsed by Customs officers confirming the fact of export. The claim cannot be denied merely on the ground that one of the corroborative evidences establishing export is not present. The rebate claim is required to be re-examined in terms of corroborative evidences including batch numbers. IN all cases where batch number and endorsements of Customs officers on the ARE-I are available, the rebate should be sanctioned. The impugned order is therefore set aside and remanded back to the adjudicating authority for re-examining the claims as specified above."

Government notes that department has not raised any issue on merit of the case and only contested the decision with respect to remand power of Commissioner (Appeals). Hon'ble CESTAT in recent judgments in the case of CCE Delhi Vs. Vikram Dhawan 2012 (284) ELT 554 (T-Del) and M/s Howkin Cookers Ltd. Vs. CCE Ahmedabad 2012 (284) ELT 677 (T-Del) has held that Commissioner (Appeals) has remand power even after amendment of section 35A(3) of Central Excise Act, 1944 vide Finance Act, 2001. It is observed that Commissioner (Appeals) had given a reasoned finding. Therefore Government directs the original authority to examine the rebate claim in accordance with directions of Commissioner (Appeals) and sanction the claims which are found admissible.

9. The revision application is disposed of in terms of above.

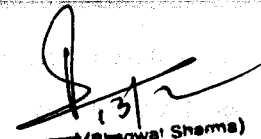
10. So ordered.



(D P SINGH)

Joint Secretary (Revision Application)

The Commissioner of Central Excise,
Mumbai-I Commissionerate,
115, Central Excise Building,
Maharshikarve Road,
Mumbai - 400020

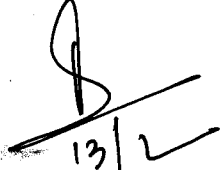


(भागवती शर्मा/Bhagwati Shama)
सहायक आयुक्त/Assistant Commissioner
C/EC-OSD (Revision Application)
वित्त विभाग (राज्य 17-117)
Ministry of Finance (Deptt of Rev.)
नई दिल्ली/Govt of India
New Delhi

G.O.I. Order No. 116 /2013-Cx dated 12.02.2013

Copy to:

1. The Commissioner of Central Excise & Customs, Mumbai-I Commissionerate, 115, New Central Excise Building, M.K. Road, Opp. Churchgate Station, Mumbai – 400 020
2. The Commissioner of Central Excise & Customs (Appeals), Mumbai-I, Meher Building, Dady Seth Lane, Chowpatty, Mumbai – 400 007.
3. Assistant Commissioner of Central Excise (Rebate), Mumbai-IV, 2nd Floor, MSEB Building, Estrella Battery Compound, Dharavi, Mumbai-19.
4. PA to JS(RA)
5. Guard File.
6. Spare Copy


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(भागवत शर्मा/Bhagwat Sharma)
सहायक आबुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
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