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GOVERNMENT OF INDIA  
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Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/85/13-RA/612

Date of Issue:- 18/01/2020

ORDER NO. 117/2020-CX(WZ)/ASRA/MUMBAI DATED 15.1.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl. No.	Revision Application No.	Applicant	Respondent
1	195/425/11-RA	M/s Sweety Industries, New Delhi.	Commissioner of Central Excise, Ahmedabad-III.

**Subject:** Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. 165/2012(Ahd-III)SKS/Commr.(A)/Ahd dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-III), Ahmedabad.

**ORDER**

This Revision application is filed by M/s Sweety Industries, Nadiad, Kheda (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. 165/2012(Ahd-III)SKS/Commr.(A)/Ahd dated 29.10.2012 passed by the Commissioner of Central Excise (Appeals-III), Ahmedabad.

2. The applicants are manufacturer of Biscuits falling under CSH 19059020 on job work basis for the principal manufacturer M/s Parle Biscuits Pvt. Ltd., Mumbai. The applicant are manufacturing branded biscuits under brand name 'Parle' and clear the same for home consumption as well-as-for-export to Nepal. The goods are exported to Nepal through Land Customs Station in terms of the Notification No. 20/2004 CE (NT) dated 06.09.2004. The applicant had availed the services of the jurisdictional Central Excise Officers for supervision and examination of export cargo and stuffing. However, the applicant have not paid MOT charges at applicable rate amounting to Rs. 47,669/- (Rupees Forty Seven Thousand Six Hundred Sixty Nine Only) for export stuffing for the period from 15.12.2008 to 08.04.2011 at their factory premises as required under Notification No.69/98-CE(NT) dated 04.09.1998. The jurisdictional Superintendent issued Show Cause Notice for recovery of MOT charges along with interest & penalty. The Adjudicating Authority confirmed the demand along with interest and imposed a penalty vide Order in Original No. AR-IV/V/03-01/MP/2011-12 dated 27.11.2012.

3. Aggrieved by the said order, the applicant filed an appeal before the Commissioner (Appeals-III), Ahmedabad on the following grounds :-

3.1 As per instruction in Chapter 18, Part-II of C.Ex. Manual of Supplementary instructions, the demand for MOT charges for services during office hours is not sustainable;

3.2 They have paid amount of Rs.4,358/- MOT Charges for services rendered after office hours on during the period from 06.04.2011 to 08.04.2011 vide GAR-7 Challan No. 00208 dated 14.03.2012. MOT charges of Rs. 4,358/- have been paid for 4 hours service rendered for export to Nepal on 06.04.2011 to 08.04.2011.

3.3 The order demands the MOT charges invoicewise and not on total hours per day.

3.3 As per Tribunals order in case of Naval Overseas – 2011(265) ELT a-116, the MOT charges are payable for services are applicable for clearances of export goods as per Notification No. 42/2001-CE(NT) dt. 26.06.2001 where supervision by excise officers is at the option of the assessee; in the present case the exports are made to Nepal under Notification No. 20/2004-CE(NT) dated 06.09.2004 which procedure to be followed mandatory by the applicant and not at his option.

3.4 Penalty under Customs Act could be levied only by a Customs Officer.

4. The Appellate Authority observed that the Notification No. 69/980Cus(NT) dated 04.09.1998 or the Supplementary Instructions had not given any exemption to the exporters from payment of overtime charges, who exports their goods to Nepal under Notification No. 20/2004-CE(NT) dated 06.08.2004. The Appellate Authority upheld the Order in Original.

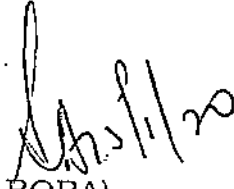
5. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the various ground.

6. Personal hearing scheduled in this case on 03.10.2019 was attended by Ms. Padmavati Patil & Shri Kiran Chavan, Advocates who reiterated the ground of revision application. Nobody attended hearing on behalf of respondent department.

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

8. Government observes that issue involved in this case pertains to amount paid as merchant overtime charges (MOT Charges) for service provided by Central Excise Officers in the form of examination and sealing of consignments for export to Nepal from factory premises. Government finds that this issue does not fall in the category of cases mentioned in proviso to Section 35B(1) of the Central Excise Act, 1944 and hence revision application is filed beyond jurisdiction and maintainable under Section 35EE of the Central Excise Act, 1944. The applicant is required to file appeal before Hon'ble CESTAT. As such, Government is constrained to dismiss this revision application as not maintainable.

9. Revision Application thus stands dismissed.
10. So, ordered.



(SEEMA ARORA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

To

M/s Sweety Industries,  
A/c Parle Products Pvt. Ltd.,  
43/45, GIDC Industrial Estate,  
Nadiad, Dist. Kheda.

Copy to :

1. The Commissioner of CGST & Central Excise, Ahmedabad North, Custom House, 1<sup>st</sup> floor, Navrangpura, Ahmedabad - 380 009.
2. The Commissioner (Appeals), CGST & Central Excise, Central Excise Bhavan, 7<sup>th</sup> Floor, Near Polytechnic, Ambavadi, Ahmedabad - 380 015.
3. Sr. P.S. to AS (RA), Mumbai.
4. ~~Guard File.~~
5. Spare copy.