



**REGISTERED
SPEED POST**

**F.No. 198/205-206/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066**

Date of Issue... 14/2/13

Order No. 124-125 / 2013-CX dated 14 .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 orders-in-appeal No. 380-381/VDR-I/2010 dated 01.12.2010 passed by Commissioner of Central Excise (Appeals), Vadodara.

Applicant : Commissioner of Central Excise, Customs & Service Tax, Vadodara.

Respondent : M/s Dhariwal Industries Ltd., Vadodara.

ORDER

These revision applications are filed by the applicant Commissioner of Central Excise and Customs, Vadodara against orders-in-appeal No. 380-381/VDR-I/2010 dated 01.12.2010 passed by Commissioner of Central Excise (Appeals), Vadodara with respect to orders-in-original passed by Assistant Commissioner, Central Excise Customs & Service Tax, Division-I, Vadodara-I.

2. Brief facts of the case are that the Respondents are engaged in the manufacture of Pan Masala containing Tobacco falling under Ch. 24039920 of the CETA, 1985. They are working under Pan Masala Packing Machines (Capacity determination & collection of duty) Rules, 2008 i.e. compounded levy scheme under the provisions of Section 3(A) of CEA, 1944. The respondent's rebate claims were sanctioned by the original authority vide impugned Orders-in-Original. Being aggrieved by the Impugned two orders, the department-filed two appeals before Commissioner (Appeals) on the ground that due to rounding of Rs. 2.3875 to Rs.2.39 the actual amount refunded Rs. 35796225/- (Rs. 2.39 X 14977500). In terms of provision contained in section 37 D of the Central Excise Act, 1944, it is crystal clear that amount of refund /Rebate as a whole is to be rounded off, and not refund / rebate of duty per pouch is to be rounded off under the provisions of this Act. Thus the rebate amount rounded off to the amount of Rs. 2.39 per pouch instead of Rs. 2.3875 per pouch is wrong which resulted into excess payment of rebate amounting to Rs.37,444/-. Commissioner (A) vide his impugned Orders-in-Appeal upheld both the orders by rejecting department's appeals.

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

3.1 The Section 37 D of the Central Excise Act,1944 states that " the amount of duty, penalty, interest, fine or any other sum payable, and the amount of refund or any other sum due under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of rupee consisting of paise then, if such part is 50 paise or more, it shall be increased to one rupee and if such part is less than 50 paise it shall be ignored". From the above it is crystal clear that amount of refund / Rebate as a whole is to be rounded off, and not refund / rebate this Act. Thus the rebate amount rounded off to the amount of Rs. 2.39 per pouch instead of Rs. 2.3875 per pouch is wrong which resulted into excess payment of rebate causing revenue loss. The issue relates to calculation of the amount of rebate and rounding off the amount has been disputed hence, It is squarely a law point involving scope of Section 37 D of Central Excise Act, 1944 and an appeal in CESTAT under Section 35 B(2) has been filed. However, the above rounding off will also affect the rebate amount though the admissibility of rebate remains unaltered, therefore, for abundant" precaution to safe guard revenue this appeal is being preferred.

4. Show cause notices were issued to the respondent under Section 35EE of Central Excise act, 1944 to file their counter reply. No counter reply is filed in these cases till date.

5. Personal hearing scheduled in this case on 09.08.2012, 12.10.2012 and 20.12.2012 was not attended by anybody on behalf of either applicant department or the respondents. However applicant department, vide letter dated 07.12.2012 apart from reiterating the grounds of revision application, requested to decide the cases in terms of GOI order No. 1145-1151/2012-Cx dated 19.09.2012.
6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.
7. Government observes that the applicant engaged in manufacturing of Pan Masala containing Tobacco, exported the same and filed rebate claim, which was sanctioned by the original authority vide impugned Orders-in-Original. The department filed appeals before Commissioner (Appeals) on the ground that the order of original authority is against the basic tenets of Section 37D of the Central Excise Act, 1944 wherein, it has been provided that any sum payable or due if contains a part of rupees consisting of paise, shall be increased to one rupees if the part is more than fifty paise and shall be ignored if it is less than fifty paise. As such, amount of rebate as a whole is to be rounded off and not refund/rebate of duty per pouch to be rounded off. Hence, the original authority vide impugned order wrongly rounded off the amount of Rs. 2.39 per pouch instead of Rs. 2.3575 per pouch, which resulted in excess payment of total amount of Rs. 37,444/-. Commissioner (Appeals) decided the cases in favour of respondent. Now, the applicant department has filed these Revision Applications on ground mentioned in para (4) above.
8. Government observes that the applicant department is basically relying upon provisions contained in the Section 37D of the Central Excise Act, 1944. The said provision reads as follows:-

" the amount of duty, penalty, interest, fine or any other sum payable, and the amount of refund or any other sum due under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of rupee consisting of paise then, if such part is 50 paise or more, it shall be increased to one rupee and if such part is less than 50 paise it shall be ignored".

From perusal of above provisions, it is ample clear that the method of rounding off provided in the said section 37D is applicable for any amount of duty, penalty, interest, fine, rebate/refund or any other sum. The amount cannot be construed to have a meaning that rebate/refund should be rounded off for paise in respect of each unit pouch. The provision clearly implies that such rounding off should be made for aggregate of sum/amount of rebate and not on individual units of rebate per pouches. As such the said provision makes it unambiguous that the rounding off has to be made in aggregate of sum/amount payable or due. Hence, in their impugned cases, the rounding off should be done on whole amount calculated @ 2.3875 per pouch multiplied by no. of pouches and not @ 2.39 multiplied by no. of pouches, as has been done by the original authority in this impugned cases. Hence, Government finds that applicant department's contention is tenable.

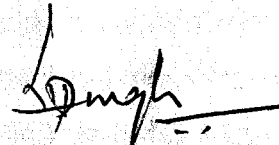
9. Government further observes that the department has cited GOI Revision Order No. 1145-1151/2012-Cx dated 19.09.2012 passed this authority, in the same issue. Government notes that in para (12) of the said order No. 1145-1151/2012-Cx dated 19.09.2012 while observing the approximation of 2.1899 per pouch rebate to 2.19, merely has given passing remarks. The said provision of section 37D of the Central Excise Act, 1944 were neither placed before this authority by the department nor considered by Government in the said case. The Revisionary Authority had not discussed issue of rounding off in light of section 37D *ibid* in that case. Government therefore after considering the provision of

section 37D ibid, is of considered view that rounding off has to be done for aggregate sum/amount and not on individual units of rebate per pouch.

10. In view of above discussion, Government sets aside impugned Orders-in-Appeal and allows revision applications.

11. Revision Applications succeed in above terms.

12. So ordered.



(D P Singh)

Joint Secretary(Revision Application)

Commissioner of Central Excise & Customs,
Central Excise Building,
Race Course, Vadodara.

M.J.

ATTESTED



(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
15 दिल्ली / New Delhi

GOI Order No. 124-125 /13-CX dated 14 .02.2013

Copy to:

1. The Commissioner of Central Excise (Appeals) , Vadodara, Central Excise building, Race Course, Vadodara.
2. The Assistant Commissioner of Central Excise, Division- I, Vadodara-I
3. M/s Dhariwal Industries Ltd., NH-8, Fazalpur, P.O.-Rayaka, Distt. Vadodara.
4. Guard File.
5. PS to JS (RA)
6. Spare Copy



(Bhagwat P. Sharma)
OSD(Revision Application)

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 551

LECTURE 1

STATISTICAL MECHANICS

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