



REGISTERED  
SPEED POST

F.No.198/626/2011-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....13/9/13

ORDER NO. 1246/13-Cx DATED 12-9-2013 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  
M-I/AV/277/11 dated 6.5.2011 passed by  
Commissioner of Central Excise (Appeals) Mumbai  
Zone-I Mumbai

APPLICANT : Commissioner of Central Excise, Thane-II

RESPONDENT : M/s Interlabels Industries Pvt. Ltd., Thane

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**ORDER**

This revision application is filed by Commissioner of Central Excise, Thane-II against the order-in-appeal No. M-I/AV/277/11 dated 6.5.2011 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I Mumbai with respect to order-in-original No. 35/06-07 dated 12.10.2006 passed by Assistant Commissioner of Central Excise, Division Bhayander , Thane-II Commissionerate.

2. Brief facts of the case are that M/s Interlabels Industries Pvt. Ltd. are holding Central Excise Registration and are engaged in the manufacture of excisable goods falling under Chapter sub-heading No. 3920.39 and 4821.00 of Central Excise Tariff Act, 1985. The party informed the department vide letter dated 29.07.2005 that due to heavy rains on 26.07.2005, rain water had entered in their factory premises causing damages/destruction to the goods stored in the factory. Subsequently, they submitted the details about destroyed goods on 13.09.2005 and requested for remission of duty of Rs. 2,80,560/- and Education Cess amounting to Rs.5611/- on damaged plastic labels combined with paper totally valued at Rs. 17,53,500/-. The range officer visited the factory premises on 14.09.2005 for inspection but the factory was found closed and no goods were available for inspection. It was ascertained that the party had surrendered their Excise Registration Certificate on 6.9.2005 and had shifted their factory to Vasai. There was no mention of destruction caused to the goods or machinery or the factory premises due to rains in the police panchnama and no such evidence was found by the Range officers during their visit to the factory nor were any damaged goods available for inspection on 14.9.2005. It, therefore, appeared to the department that the applicant had clandestinely cleared the said goods and made false declaration that the same were damaged / washed away in the rains to avail remission of duty on the said goods. Therefore a show cause notice dated 28.10.2005 was issued to the applicants demanding duty totally amounting to Rs.2,86,171/- under Section 11-A of Central Excise Act, 1944 alongwith interest and proposing imposition of penalty. After following due process of law, the adjudicating authority vide impugned order-in-original

confirmed the demand of Rs. 2,86,171/- alongwith interest and imposed penalty of Rs.2,86,171/-.

3. Being aggrieved by the said order-in-original, respondent filed appeal before Commissioner (Appeals), who allowed the same on the ground that application for remission of duty under Rule 21 of Central Excise Rules 2002 was pending and demand of duty for same goods was premature and therefore the order-in-original was set aside.

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 As per records of this office no remission of duty was sought & hence Adjudicating Authority has no option but to confirm the duty. On the body of the assessee's letter dated 20.9.2005, 'the concerned Range Inspector had put an endorsement in his' handwriting that *'the copy of insurance claim has not been submitted' with this letter, same may be forwarded'*. However, inspite of the lapse of about a year since the issuance of Show Cause Notice and numerous opportunities available to the assessee, they failed to submit the insurance claim papers. The assessee themselves claim in their letter dated 20.9.2005 that no police complaint *filed* and the reason for this *is* given as 'approached police authority but it was informed that no FIR is required on natural calamity'. Though the assessee claims to have lost their goods in *rains* on 26.7.2005, they submitted the details of goods damaged on 13.9.2005 only after two letters dated 5.8.2005 and 18.8.2005 from the department. The assessee also *filed* a remission of duty application on *6.9.2005*. The officers of the Range visited the factory premises and it was seen that a reasonable conclusion could not be arrived at regarding destruction of goods as there was no visual and tangible evidence like breakage of gates and walls, damage to plant and machinery etc. available at the *time* of the *visit* of the Range *Officers* to the factory.

4.2 Therefore, since the goods which the assessee claims to have been destroyed was

not available for verification and in the absence of an insurance *claim* and police panchnama, to conclude that the goods were actually destroyed only on the basis of the assessee's say is not acceptable. Commissioner (Appeals) at Para-7 of the Order, has appreciated that the officers had taken prompt *action to verify* the claim of damage of goods. But the unit was closed and was shifted to altogether different place. Thus, the officers never were given opportunity deliberately to verify the genuineness of the claim. In light of these facts, the Commissioner (Appeals) has found at Para-B of the Order that the conduct of the appellant *is* not above suspicion. Under these Circumstances, extending uncalled-for benefit of doubt to the unit is not justified. Commissioner (Appeal) should have appreciated the fact that in absence of proper Remission Application filed by the unit, Remission of duty cannot be granted. Further, in absence of duty being remitted by the proper officer, the adjudicating authority is left with no option but to confirm the demand of duty involved on excisable goods under reference.

4.3 In view of these facts, it appears that the Commissioner (Appeals) has erred in setting aside the order-in-original No. 35/06-07 dated 12.10.2006 and therefore the decision of setting aside the order-in-original is not legal and proper.

5. Personal hearing scheduled in this case on 07.08.2013 at Mumbai was attended by Shri N.R. Nadkarni, Consultant on behalf of the respondent. Nobody appeared for hearing on behalf of the applicant department.

6. Government has carefully considered the relevant case records, oral & written submissions and impugned order-in-original and order-in-appeal.


7. On perusal of records, Government observes that Commissioner (Appeals) has set aside the impugned order-in-original as the duty remission application was pending and duty demand was premature. Now department in this revision application has contended that applicant submitted detail of goods destroyed only on 13.09.2005 whereas goods are claimed to have lost in floods on 26.07.2005, that no police

complaint was filed, that remission application was filed on 6.9.2005, that during visit to factory on 14.09.2005, the Range Superintendent, factory was found closed and no visual and tangible evidence of loss of goods was found, that Commissioner (Appeals) has found conduct of assessed as suspicious and wrongly allowed the appeal. In this regard, Government observes that department has admitted filing of duty remission application on 6.9.2005 but stated that in view of factory visit report of Superintendent the remission of duty cannot be allowed. This contention is not legally tenable since the remission application filed on 6.9.2005 is required to be decided in accordance with law by the competent authority. The demand can be raised only if duty remission application filed under rule 21 of Central Excise Rules 2002 is rejected. In this case, the duty remission application filed on 6.9.2005 is still pending and the Commissioner (Appeals) has rightly held the demand as pre-mature. The case matter is required to be remanded back for fresh decision, after the duty remission application is decided by competent authority.

8. In view of above position, Government set aside the impugned orders and remands the matter back to original authority for denovo adjudication by taking into account above observations. A reasonable opportunity of hearing will be afforded to parties.

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


10. So ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

Commissioner of Central Excise,  
Thane-II Commissioneate,  
4<sup>th</sup> Floor, Navprabhat Chambers,  
Ranade Road, Dadar (West),  
Mumbai – 400 028



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Revenue)  
भारत सरकार/Govt of India  
नई दिल्ली/New Delhi

**Order No./246/13-Cx dated /2. 9.2013**

Copy to:

1. M/s Interlabels Industries Pvt. Ltd. Nandan Estate, Survey No. 59, Muljipada, Opp. Krishna Rsorts, W.E. Highway, Vasai East, Thane – 401210
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dady Seth Lane, Chowpatty, Mumbai – 400 007.
3. The Assisant Commissioner of Central Excise, Bhayander Division, Thane-II, 1<sup>st</sup> Floor, Divine Sheraton Plaza, Jesal Park, Bhayander (E).

✓ 4. PA to JS(RA)

5. Guard File.

6. Spare Copy

  
12/9  
(B.P. Sharma)

OSD(Revision Application)