

REGISTERED  
SPEED POST



F.No.195/1037/2011-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. 1250 /13-Cx DATED 12.09.2013 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. CS/27/DMN/SDMN/2011-12 dated 28.07.2011 passed by the Commissioner of Central Excise (Appeals) Daman

APPLICANT : M/s Cipla Ltd., Mumbai

RESPONDENT : Commissioner of Central Excise, Daman

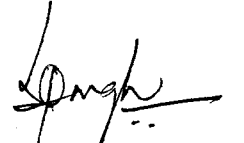
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**ORDER**

This revision application is filed by M/s Cipla Ltd., Mumbai against the order-in-appeal No.CS/27/DMN/SDMN/2011-12 dated 28.07.2011 passed by the Commissioner of Central Excise (Appeals) Daman, with respect to order-in-original passed by the Assistant Commissioner of Central Excise & Customs, Division South Daman.

2. The facts of the case in brief are that the applicant, a merchant exporter procured the goods from manufacturer M/s Advanced Remedies Pvt. Ltd., Daman. The manufacturer had cleared goods to the applicant for export on payment of duty amount of Rs.11911/-. The applicant had filed refund claims to the original authority on the ground that the manufacturer erroneously paid central excise duty of Rs.11911/- as the goods were exempted vide Notification No.04/2006-CE dated 1.3.2006, as amended. The manufacturer had paid duty on the exempted goods, which resulted in erroneous payment of Rs.11911/-. A show cause notice dated 30.4.2010 was issued to the applicant by the original authority as to why the refund claim should not be rejected under provision of Section 11B of the Central Excise Act 1944. The said show cause notice was decided vide the impugned order dated 31.8.2010 by the original authority wherein the refund claim was rejected on various grounds.
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 on the various grounds.
5. Personal hearing scheduled in this case on 8.8.2013 at Mumbai was attended by Shri Prashant Mhatre, Manager & Shri Jivan C.Patil, Manager on behalf of the applicant, who reiterated the grounds of revision application. Nobody attended hearing on behalf of the department.

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 issue involved is of refund of erroneously paid duty on the goods which were exempted vide Notification No.4/06-CE dated 1.3.06, under Section 11B of Central Excise Act 1944. The said refund claim was rejected by the original authority. In appeal, Commissioner (Appeals) upheld the impugned order-in-original.
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 since it pertains to refund of erroneously paid duty under Section 11B 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 form 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 Cipla Ltd.  
3<sup>rd</sup> Floor, Raj Plaza  
Excise Department, Opp.Everest Masala Factory  
L.B.S. Road, Vikhroli (W)  
Mumbai-400083

*Attested*  
(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner for  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt of India  
नई दिल्ली/NEW DELHI

Order No. 1250 /13-Cx dated 12.09.2013

Copy to:

1. Commissioner of Central Excise, Customs & Service Tax, Daman
2. Commissioner of Customs & Central Excise, Customs & Service Tax (Appeals), 5<sup>th</sup> Floor, Adarshdham Building, Vapi-Daman Road, Vapi-396191
3. The Assistant Commissioner of Central Excise Customs & Service Tax, Division-South Daman, Daman
4. Guard File.
- ✓ 5. PS to JS (RA)
6. Spare Copy

ATTESTED



(B.P. Sharma)  
OSD (Revision Application)