



REGISTERED  
SPEED POST

F.No.195/1224/11-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...12/9/13

Order No. 1263 /2013-CX dated 16.09.2013 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 order-in-appeal No. AGS (162) 118/2011 dated 15.9.11 passed by the Commissioner (Appeals) Central Excise, Aurangabad

Applicant : M/s Wipro Ltd., Aurangabad

Respondent : Commissioner of Central Excise and Service Tax, Aurangabad

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**ORDER**

This revision application is filed by the applicant M/s Wipro Ltd., Aurangabad against order-in-appeal No.AGS (162) 118/2011 dated 15.9.11 passed by the Commissioner (Appeals) Central Excise, Aurangabad with reference to order-in-appeal passed by the Deputy Commissioner of Central Excise, Division-II, Aurangabad.

2. Brief facts of the case are that the applicants are engaged in the manufacture of Modular Office Metallic Furniture. The said goods were cleared to SEZ on payment of Central Excise Duty. The applicants filed 7 (seven) rebate claims of Rs.5,34,173/-. The department issued show cause notice asking the applicants as to why the rebate claims should not be rejected under Section 11B of Central Excise Act, 1944, as the applicants had failed to produce the duplicate copy of ARE-1 from the authorized officer of the SEZ regarding the re-warehousing/receipt of goods in the SEZ. The department could not compare the original ARE-1s submitted by the applicants with the duplicate copy of ARE-1 to be received from the authorized officer, in tamper proof sealed cover through applicants, as stipulated in Notification No.19/2004-CE(NT) dated 06.09.04 as amended issued under Rule 18 of the Central Excise Rules, 2002. The Deputy Commissioner, Central Excise and Customs; Aurangabad-II Division vide impugned order-in-original rejected all the seven rebate claims totally amounting to Rs.5,34,173/- under the provisions of Notification No.19/2004-CE (NT) dated 06.09.2004 issued under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944 due to non-receipt of said duplicate copies of ARE-1.

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 35EE of the Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The Assistant Commissioner i.e. Adjudicating/Rebate Sanctioning Authority has already accepted in an earlier order-in-original No.1946-1955/CE/AC/2010 dated 08.10.2010 that it is not assessee's responsibility to submit Duplicate copy of ARE-1, then it is not understood as to why the rebate claims have been rejected, which clearly shows the non-application of mind and disrespect to the law already settled in the matter and accordingly on this count alone the impugned orders are liable to be quashed/set aside by granting consequential relief to the assessee.

4.2 It is not the case of the department that the goods were not exported and the proof of exports are not accepted and since the Department has not disputed and has in fact admitted that the goods were duly exported. It was not proper for the Deputy Commissioner of Central Excise to reject the genuine claim of rebate on the ground of procedural deficiencies and in action on the part of the revenue and the non-cooperation between the revenue's own department cannot take away the substantive right of the assessee. The applicant therefore, respectfully submits that the sanctioning authority has done gross injustice to the assessee by not granting the genuine/legitimate rebate claim. There has been a plethora of judgments that 'substantial benefit cannot be denied on ground of technical/procedural lapses.' In the present case there is gross negligence on the part of the revenue department.

4.3 The applicant respectfully submits that impugned order has been passed without application of mind and without appreciating that requisite documents were provided by the assessee which are necessary for the processing and allowing the rebate claim which includes copies of ARE-1s, Self Attested Copies of Cenvat Account (RG-23A PART-II), Register showing the debit entries of the duty paid, excise invoice, commercial invoice, packing list, purchase order and relevant ledger abstract. Receipt of these documents has not been denied by the department and in the circumstances, it was not proper for the department to reject the rebate claims.

4.4 Sometimes assessee is unable to avail a benefit only because the department does not give necessary permission in time. In one case, a dealer

could not adjust the refund due to him under Karnataka Sales Tax Act only because the authorities did not give him required permission within the specified time. Later, when the dealer was proceeded against, the Hon'ble Supreme Court held that the dealer cannot suffer merely because of inaction of department (of not giving permission which he was fully entitled to) - Mangalore Chemicals and Fertilizers Co. Ltd. v. Dy Commissioner of Commercial Tax-1991(55) ELT437(SC). In the present case when it is the responsibility of the department either to provide duplicate copies of ARE-1s in a sealed cover to the assessee or post the same to the Rebate sanctioning authority but in both the cases the department has failed to do so accordingly the ratio of the Hon'ble Apex Court judgment is squarely applicable in the facts and circumstances of the present case.

5. Personal hearing scheduled in this case on 08.08.13 was attended by Shri R.C.Gupta, advocate on behalf of the applicant who reiterated the grounds of revision application. Shri Chuna Ram, Assistant Commissioner of Central Excise attended the hearing on behalf of the respondent department and stated that order-in-appeal being legal and proper may be upheld.
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 applicant's rebate claims were rejected by the original authority mainly on the ground that the applicant had failed to submit duplicate copy of ARE-1 from the authorized officer of the SEZ evidencing the re-warehousing/receipt of goods in the SEZ. Commissioner (Appeals) upheld impugned order-in-original. Now the applicant has filed this revision application on grounds mentioned in para (4) above.
8. Government observes that as per procedure, the original and duplicate copy of ARE-1 duly completed in all respects is presented to the Customs alongwith goods at the port of export. The Customs Officer after being satisfied about the fact that export of said goods is in accordance with law, he certifies in Part-'C' of both the duplicate and original copy of ARE-1 that goods

are exported said shipping bill No. After the said customs certification, customs will hand over original copy to the exporter and send the duplicate copy either by post or handover to exporter in a sealed cover for submission before rebate sanctioning authority. In this case the duplicate copy has not reached the rebate sanctioning authority. But the original copies of ARE-1 is submitted. The same customs certification confirming the export of good is available on original ARE-1. The non-submission of duplicate copy of ARE-1 being a procedural lapse cannot be a ground for denying the substantial benefit of rebate claim. However, the original authority could have made correspondence with the SEZ Customs authority to either ascertain genuineness of ARE-1 certified copy or get confirmation about receipt of said goods in SEZ. The substantial benefit of rebate claim cannot be denied for minor procedural infractions.

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

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

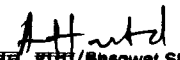
11. So, ordered



(D.P.Singh)

Joint Secretary (Revision Application)

M/s WIPRO Ltd.,  
L-8, MIDC Waluj Industrial Area,  
Aurangabad(MS) -431 136,

  
(भगवत शमा/Bhagwat Shama)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

GOI Order No. 1263 /2013-CX of 16.09.2013

Copy to:

1. The Commissioner of Central Excise & Service Tax, Customs and Central Excise Commissionerate, N-5, Town Centre, CIDCO, Aurangabad-431003.
2. The Commissioner (Appeals), Central Excise & Customs, Town Centre, N-5, CIDCO, Aurangabad – 431003.
3. The Deputy Commissioner, Central Excise & Customs, Division II, Aurangabad.
4. Shri R C Gupta, Advocate, C/o Legum Juris, (A Law Firm), "Aashirwad", Kothi No.557, Sector-19, Faridabad-121002.

✓ 5. PS to JS(RA)

6. Guard File.

7. Spare Copy

ATTESTED



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