



REGISTERED
SPEED POST

F.No.198/623 & 662-667/2011-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 17/8/13

ORDER NO. 1265-127/13-Cx DATED 17-09-2013 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
Nos. mentioned in table of para 1.

APPLICANT : Commissioner of Central Excise, Raigad
Commissionerate

RESPONDENT : M/s Highland International, 1-3 & 25, Kembros
Industrial Estate, Off L.B.S. Marg, Bhandup (West),
Mumbai – 400 078

ORDER

These revision applications are filed by Commissioner of Central Excise, Raigad against the orders-in-appeal No. passed by Commissioner of Central Excise (Appeals) Mumbai Zone-II as detailed below :-

Sr. No.	RA No.	Against OIA No.	OIO No.
1.	198/623/11	US/21/RGD/11 dt. 17.06.2001	RC-161-167/10-11 dt. 18.08.10
2.	198/662-667/11	US/233-238/RGD dt. 9.9.2011	RGD/PNL/RC-315-320/10-11 dt. 25.01.11

2. Brief facts of the case are that ACCE Panvel, Raigarh in the case relating to RA No. 198/623/11 has sanctioned the rebate claims to M/s Highland International in respect of export of inputs which were cleared as such on reversal of Cenvat Credit in terms of rule 3(4) of Cenvat Credit Rules 2004. Appeal filed by department was rejected by Commissioner (Appeal) and thereby upholding the sanction of rebate claims. Rebate claim in respect of RA No. 198/662 to 627/11 was however rejected by adjudicating authority though the inputs as such on reversal of Cenvat Credit were exported in these cases also. In these cases appeal filed by M/s Highland International was allowed by Commissioner (Appeals) thereby allowing the said rebate claims.

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

3.1 The above order of Commissioner (Appeals) is inappropriate and not justifiable in as much as it appears that in Notification No. 40/2001-CE(NT) dated 26.06.2001 and Notification No. 19/2004-CE(NT) dated 6.9.2004 as amended issued under Rule 18 of Central Excise Rules 2002, the condition, limitation and procedure for grant of rebate of duty on export of goods has not been adhered to in the instant case. As per the conditions and limitations prescribed the manufactured goods should have been

exported for claim /sanction of goods. The rebate of duty can be granted where the duty amount was paid through PLA or CENVAT on the manufactured goods. However, such rebate is not admissible when the manufacturer clears CENVAT availed inputs (which were manufactured by another manufacturer) as such. Therefore the intention of the legislature is not to extend the benefit of rebate, when the inputs are cleared as such for export. The claimant have availed CENVAT credit of the said inputs at the time of receipt of such goods in their factory premises and the amount reversed / paid at the time of clearance of inputs for export were claimed for rebate. No provisions has been provided in the Central Excise Rules 2002 to permit rebate of amount paid at the time of export of inputs /capital goods cleared as such, for export. Present legal position does not permit the export of inputs / capital goods as such on reversal of the credit taken or on payment of the amount equivalent to the credit taken and hence rebating the same on export. The reversal of payment of the equal amount of the credit availed in respect of such inputs / capital goods even cleared for home consumption does not fall within the definition of manufactured goods. The levy and collection of duty of Excise arises only when goods are manufactured or produced and not otherwise. The amount equivalent to the credit taken is treated as duty of excise for limited purpose, so as to enable the use of such inputs/capital goods to take further credit and not for sanction of rebate.

3.2 Moreover, in the similar matter of M/s Micro Inks Ltd., department had filed writ petition bearing No. 2195 of 2010 before Hon'ble Bombay High Court against the Revision Authority's order dated 04.06.2010 issued from F.No. 195/274/08-RA-CX which held that in view of Rule 3(5) and Rule 3(6) of Cenvat Credit Rules the manufacturer clearing the inputs/capital goods is deemed manufacturer and rebate is admissible. The said appeal of the department was dismissed vide order dated 23.03.2011 by the Bombay High Court. Now the department has sent proposal to Board for filing SLP and the matter is under consideration of Board.

4. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act 1944 to file their counter reply. The respondent has not filed any counter reply till date.

5. Personal hearing scheduled in this case on 8.8.2013 at Mumbai was attended by Shri J.C. Patel, Advocate on behalf of the applicant who reiterated the finding of Commissioner (Appeals) and requested to uphold the impugned orders-in-appeal. Since issue involved in these cases is same, so all these revision applications are taken up together for decision by this common order.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

7. On perusal of records, Government observes that the issue whether reversal of cenvat credit under rule 3(4)/ 3(5) of Cenvat Credit Rule 2004 on removal of inputs / capital goods as such is to be treated as payment of duty for the purpose of sanctioning rebate claim under rule 18 of CER 2002 read with Not. No. 19/04-CE(NT) dated 6.9.2004, has already been decided vide GOI Revision Order No. 873/10-Cx dated 26.05.10 in the case of M/s Micro Inks Ltd., GOI order No. 18/09 dated 20.01.2009 in the case Sterlite Industries Ltd. Raigarh and GOI Order No. 326/10-Cx dated 18.02.10 in the case of M/s Ispat Industries Ltd., Raigarh. In the said orders it was held that an amount reversed under rule 3(4) / 3(5) of Cenvat Credit Rules 2004 on removal of inputs / capital goods as such, is to be treated as payment of duty of excise for the purpose of sanctioning rebate claim under rule 18 of Central Excise Rules 2002 read with Not. No. 19/04-CE(NT) dated 6.9.2004. All the orders were challenged by department before Bombay High Court in the following writ petitions :

Sr. No.	Case of	W.P. No. filed by department	Against Order No.	GOI	Date of Judgment
1.	M/s Ispat Industries	88/11	326/10-Cx dt. 18.2.10		24.03.2011
2.	M/s Micro Ink Ltd.	2195/10	873/10-Cx dt. 26.05.10		23.03.2011
3.	M/s Sterlite Industries India Ltd.	2094/10	18/09 dt. 20.01.09		24.03.2011

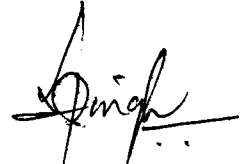
The Hon'ble High Court of Bombay has upheld the Government of India Revision Orders in all these cases and dismissed writ petitions filed by department.

8. Applicant department has contested the impugned order-in-appeal on the ground that they have filed SLP in Supreme Court against Bombay High Court order dated 23.03.2011 in the case of M/s Micro Ink Ltd. Government notes that Hon'ble Supreme Court has held in the case of UOI Vs. Kamalakshi Finance Corporation Ltd. 1991 (55) ELT 433-SC that orders of appellate authority are to unreservedly followed by subordinate authorities unless the operation of the same has been stayed by competent court. In this case, no stay is granted by Hon'ble Supreme Court. Government also notes that SLP No. 6120/12 filed in Supreme Court by department against Bombay High Court order dated 24.03.2011 in W.P. No. 2094/10 in the case of Sterlite Industries India Ltd. is also dismissed vide order dated 14.09.2012.

9. In view of position explained above, the impugned order-in-appeal is upheld being legal and proper.

10. The revision application is rejected being devoid of merit.

11. So ordered.


(D.P. Singh)

Joint Secretary to the Govt. of India


Commissioner of Central Excise (Rebate),
Raigad Commissionerate,
Ground Floor, Kendriya Utpad Shulk Bhavan,
Plot No.1, Sector-17, Khandeshwar,
New Panvel – 410 206

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मिनि (अधीनस्थ) (अधीनस्थ)
19/8

Order No.1265-1271/2013-Cx dated 17.09.2013

Copy to:

1. Commissioner of Customs & Central Excise (Appeals), Mumbai-III, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400614.
2. Deputy Commissioner of Central Excise & Customs, Panvel Division, Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No.1, Sector-17, Khandeshwar, New Panvel – 410 206
3. M/s Highland International, 1-3 & 25, Kembros Industrial Estate, Off L.B.S. Marg, Bhandup (West), Mumbai – 400 078
4. PA to JS(RA)
5. Guard File.
6. Spare Copy


(B.P. Sharma)
OSD (RA)