

REGISTERED

SPEED POST



F.NO. 198/212/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue..14/2/13...

ORDER NO. 126/2013-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 THE ORDER-IN-  
APPEAL NO. M-I/AV/288/10 dated 21.10.2010 passed by  
Commissioner of Central Excise (Appeals) Mumbai Zone-I

APPLICANT : The Commissioner of Central Excise, Mumbai-I

RESPONDENT : M/s Jay Chemicals, Mumbai

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**ORDER**

This revision application is filed by CCE Mumbai-I against the order-in-appeal No. M-I/AV/288/10 dated 21.10.2010 passed by Commissioner of Central Excise (Appeals) Mumbai /Zone-I with respect to order-in-original No.K-II/271-R/2007 (MTC) dated 10.05.2007 passed by DCCE (Maritime) Div. K-II Mumbai-IV.

2. The brief facts of the case are that M/s Jay Chemicals, Mumbai – 400077 (the appellant) had initially filed a rebate claim in respect of excisable goods, cleared for export vide Central Excise invoice No. 416 dated 11.03.2006 and ARE-I No. VAPI-1/R-620/2005-06 dated 11.03.2006 for Rs.66,402/- on 09.07.2006, in the office of the Maritime Commissioner, Central Excise, Mumbai-IV and was resubmitted on 11.12.2006. It was observed that the ARE-I No. VAPI-1/R-620/2005-06 dated 11.03.2006 was not endorsed on the shipping bill No.5933558 and altogether a different ARE-1 number viz. 01 dated 11.03.2006 appeared on the shipping bill NO. 5933558. On pointing out, the appellants replied that under ARE-1 No.620 dated 14.03.2006 they had dispatched the material and the mistake has been done by Custom authorities while typing, however, Custom Officer has signed on front page of ARE-1 and shipping bill which shows that the goods covered under the ARE-1 were exported under relevant shipping bill. The clarification was not supported by any documentary evidence and hence was not acceptable. As such, the export of the goods covered under ARE-1 NO. 620/05-06 dated 11.03.2006 was not established and thus the claim of Rs.66,402/- was liable for rejection in terms of Notification NO. 19/04-CE(NT) dated 06.09.04 issued under Rule 18 of Central Excise Rules 2002 read with Section 11B of Central Excise Act, 1944. Accordingly, a show cause notice dated 23.03.2007 was issued to the appellants seeking to reject the impugned rebate claim on the above mentioned grounds. The adjudicating authority vide order-in-original No. K-II/271-R/2007 (MTC) dated 10.05.2007 rejected the rebate claim of Rs.66,402/- in terms of Notification No. 19/04-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 read with Section 11B of Central Excise Act, 1944.

3. Being aggrieved by the said order-in-original, respondent filed appeal before Commissioner (Appeals) who held that respondent had submitted the copy of original shipping bills duly amended by Custom incorporating correct ARE-1 number and therefore remanded the case to ACCE for sanctioning the rebate.

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 The order of Commissioner (Appeals) is contrary to the provisions of Section 35A(3) of the Central Excise Act, 1944. Consequent to the amendment to the said provisions brought about vide Finance Act, 2001, that came into effect from 11.05.2001, the power to remand the case to the adjudicating authority for a fresh consideration stands withdrawn.

4.2 In case of M/s MIL India Ltd. vs. Commissioner of Central Excise, NOIDA in Civil Appeal No. 6888 of 2005, decided on 1.3.2007 appearing in ELT-2007 (210) ELT 188 (SC) the Supreme Court have decided that –

*"In fact the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.05.2001 under the Finance Bill, 2001. Under the notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the powers of the Commissioner (Appeals) to remand matters back to the adjudicating authority for fresh consideration".*

4.3 CBEC has also clarified vide instruction issued under F.No.275/34/2006-CX.8A dated 18.02.2010 that the Commissioner (Appeals) do not have the power to remand and is bound to decide the case finally after necessary enquiry at his level.

4.4 The Commissioner (Appeals) should have decided the case finally as she does not have statutory power to remand. Therefore, Commissioner (Appeals) has erred by remanding the case and his order-in-appeal deserves to be appealed against.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply. Respondent vide letter dated

21.12.2012 submitted the copy of shipping bill duly amended by Customs and copy of their amendment application.

6. Personal hearing scheduled in this case on 21.12.2012 was attended by Shri D.S. Meena, DCCE on behalf of the applicant department who reiterated the grounds of revision application. Shri Mitesh N. Mange, Accountant appeared for hearing on behalf of respondent and requested to uphold the impugned order-in-appeal.

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

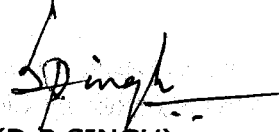
8. In the instant case, original authority had rejected the rebate claim on the ground that correct ARE-1 number was not mentioned in the relevant shipping bill. The goods were cleared for export vide ARE-1 number Vapi-I/R-620/2005-06 dated 11.3.2006 where the relevant shipping bill NO. 5933558 contained the ARE-1 number as 01 dated 11.3.2006. The respondents produced copies of amendment made in relevant shipping bill where Customs authorities had mentioned correct ARE-1 number. IN view of said amendment, Commissioner (Appeals) remanded the case to original authority for sanctioning the claim. In this revision application, the applicant department has contended that Commissioner (Appeals) has no remand power after the amendment of Section 35 A(3) of Central Excise Act, 1944 with effect from 11.5.2011 and therefore he should have decided the case finally.

9. Government notes that department has not raised any issue on merit of the case and only contested the decision with respect to remand power of Commissioner (Appeals). Hon'ble CESTAT in recent judgments in the case of CCE Delhi Vs. Vikram Dhawan 2012 (284) ELT 554 (T-Del) and M/s Howkin Cookers Ltd. Vs. CCE Ahmedabad 2012 (284) ELT 677 (T-Del) has held that Commissioner (Appeals) has remand power even after amendment of section 35A(3) of Central Excise Act, 1944 vide Finance Act, 2001. It is observed that Commissioner (Appeals) had given a reasoned finding. Therefore Government directs the original authority to examine the rebate claim in

accordance with directions of Commissioner (Appeals) and sanction the claims which are found admissible.

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

12. So ordered.



(D P SINGH)

Joint Secretary (Revision Application)

The Commissioner of Central Excise & Customs,  
Mumbai-I Commissionerate,  
New Central Excise Building, M.K. Road,  
Opp. Churchgate Railway Station,  
Mumbai – 400 020.

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

G.O.I. Order No.126 /2013-Cx dated 14.02.2013

Copy to:

1. The Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dadi Seth Lane, Chowpatty, Mumbai
2. The Deputy Commissioner (Rebate), Central Excise Mumbai-IV, 2<sup>nd</sup> Floor, M.S.E.B. Building, Estrella Batteries Compound, Dharavi, Mumbai – 19.
3. M/s Jay Chemicals, A-5, Ashirwad, Vallabhbaug Lane, Ghatkopar, Mumbai – 400 077.
- ✓ 4. PS to JS(RA)
5. Guard File.
6. Spare Copy



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