

REGISTERED

SPEED POST



F.NO. 198/495-497/11-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. **128-130/2013-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.SB/162-164/TH-I/10 dated 20.09.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I, Mumbai

APPLICANT : The Commissioner of Central Excise, Mumbai-I

RESPONDENT : M/s Parle Products, Mumbai

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**ORDER**

This revision application is filed by CCE, Thane-I Navprabhat Chamber Dadar (W) Mumbai against the order-in-appeal No.SB/162-164/TH-I/10 dated 20.09.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I, Mumbai with respect to order-in-original No. R-1007/09-10 to R-1009/09-10 dated 30.11.09 passed by ACCE, Kalyan-IV Thane-I.

2. Brief facts of the case are that M/s Parle Products, situated at North Level Crossing, V.S. Khandekar Road, Vile Parle (East) Mumbai was engaged in the manufacture of excisable goods falling under Chapter 19 of the Central Excise Tariff 1985.

2.1 The assessee had exported their excisable goods, viz. Biscuits, falling under CH S No.19531000 and 19059020 and have filed rebate claims under the provisions of Section 11B of the Central Excise Act, 1944 read with Rule 18 of CER 2002 and Notification issued there under for the goods exported from the premises of M/s Bunty Foods (India) Pvt. Ltd., situated at Plot No. A-66, Anand Nagar, Additional Ambernath, MIDC, Ambernath, manufactured on contract basis under the clause (ii) of Notification No. 36/2001-CE(NT) dated 20-06.2001.

2.2 The Assistant Commissioner Central Excise, Kalyan-IV Division vide his order-in-original No.R-1007/09-10 to R-1009/09-10 dated 30.11.09 rejected the rebate claims due to the fact that biscuits cleared for export after debiting the duty in RG-23A Pt.II were in fact exempted biscuits vide Notfn. No.03/06-CE dated 1.3.2007 as amended by Notfn. No. 03/07 dated 1.3.2007 as amended by Notfn. 22/07-CE dated 3.5.2007 and input stage credit availed on exempted exported goods is not eligible in terms of Rule 6(1) of the CENVAT Credit Rules 2004. The merchant exporter also failed to establish that the biscuits in question in packaged form were per kg. retail sale price

was more than Rs.100/-. The said biscuits remain exempted from payment of duty without availing the benefit of the cenvat credit.

2.3 Being aggrieved by the said order-in-original, the assessee filed an appeal before the Commissioner (Appeals). Commissioner (Appeals) observed that the appellant manufactured and cleared biscuits for home consumption as well as for export. For clearance for home consumption, 'nil' duty was claimed vide Sr. No. 18A of Notfn. No. 03/06-CEX dated 1.3.2006 as amended, since the retail sale price was equivalent or less than Rs.100/-. However, for export the appellant paid Central Excise duty @ 8% as per said notification Sr. No. 18 and also availed cenvat credit on inputs used in the manufacture of exempted goods.

3. Commissioner (Appeals) set aside the impugned order-in-original and allowed the appeal.

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 sub section (1A) to Section 5A of the Central Excise Act 1944, where an exemption under sub section (1) in respect of any excisable goods from the whole of duty of excise leviable there on has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of excise on such goods. The biscuits manufactured under question were absolutely exempted from duty under Section 5(A) of the Act vide Notfn. No. 03/2006 dated 1.3.06 as amended and the assessee has wrongly shown the Central Excise duty payable at 8% and has wrongly availed the Cenvat Credit on the inputs used in the manufactured of export goods and also contravened the provisions of Rule 6(1) of the Central Excise Credit Rules 2004.

4.2 The biscuits manufactured and cleared for export without declaring / bearing any retail sale price on biscuit packages are not covered under Standard Weights and Measurement (SWM) Act 1976 in view of Section 1(2) not covered within the purview

of Section 4A of the Central Excise Act 1944. Therefore, the biscuits cleared the export without bearing any RSP are covered under the transaction value as per section 4 of the Central Excise Act 1944, read with Supplementary Instructions under Chapter I of Central Excise Manual issued by CBEC.

4.3 CBEC has clarified that clearances for export is one of such situation where RSP cannot be printed on packages and same has been clarified in the Central Excise Manual of Supplementary Instructions in Chapter 3 at para 6.2(d). Section 4A of the Act is applicable in respect of those cases only where the manufacturer is legally obliged to print the MRP value on the packages of goods under the SWM Act 1976 or rules made thereunder or any other law for time being in force.

4.4 The goods i.e. biscuits of value less than Rs.100/- Kgs. are cleared by the assessee, therefore he must avail the exemption at Sr. No. 18A of Notfn. No. 3/06-CE dated 1.3.2006 for goods cleared by them for home consumption as well as for export and the said fact is not under dispute at all.

4.5 Goods exported by the assessee were absolutely exempted in terms of sub section 1(A) of Section 5A of the Central Excise Act, 1944 and the assessee should not have paid Central Excise duty on their own. As per Rule 6(1) of the Cenvat Credit Rules 2004, the assessee could avail cenvat credit only if the final products were dutiable, and as such the assessee cannot avail credit on inputs used in the manufacture of exempted final products. Thus the cenvat credit availed by assessee is wrong and recoverable under Section 11A of the Act read with Rule 14 of the Cenvat Credit Rules 2004.

5. A show cause notice dated 22.02.2011 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 reply till date.

6. Personal hearing was scheduled in this case on 1.6.2012, 28.6.2012 and 21.12.2012. Respondent vide letter dated 28.5.2012 and 12.6.2012 had requested to fix hearing in Mumbai. The hearing scheduled for 21.12.2012 was fixed at Mumbai.

But the respondent did not attend the said hearing also. The applicant has not attended any of the hearings.

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

8. On perusal of records, Government notes that respondent had exported the goods namely Biscuits and filed rebate claims under rule 18 of CER 2002 read with Not. No. 19/04-CE(NT) dated 6.9.2004 for the goods exported from the premises of M/s Bunty Foods (India) Pvt. Ltd. During scrutiny of claims, it was noticed that the biscuits cleared for export after debiting the duty in RG 23A Part-II were in fact exempted biscuits vide notification No. 03/07-CE dated 3.5.2007. The respondents had manufactured and cleared biscuits for home consumption as well as for export. They had paid nil duty for clearances to home consumption under Sr. No. 18A of the Not. No. 3/06-Cx dated 1.3.2006 as amended since the retail sale price per Kg. was equivalent or less than Rs.100/-. However for exports they paid Central Excise duty @8% as per Sr. No.18 of said notification and also availed cenvat credit on the inputs used in manufacture of exported goods. It was observed that biscuits cleared for export on payment of duty were in fact exempted vide notification mentioned above and therefore they were not required to pay duty. Accordingly, their SCNs dated 23.02.2009, 18.02.2009 and 13.02.2009 were issued to reject the rebate claims of Rs.1,03,518/-, Rs.19,55,257/- and Rs.7,08,549/-. The ACCE after following the due process of law, rejected the said rebate claims. In appeal, Commissioner (Appeals) set aside the impugned order-in-original and allowed the rebate claims. Now, department has filed these revision applications on the grounds stated in para 3 above.

9. Commissioner (Appeals) has allowed the rebate claim mainly on the ground that Not. No. 3/06-CE as amended is applicable only for goods cleared for home consumption and since there is no requirement of fixing Retail Sale Price or MRP on export goods, so the export goods go out of the said notification and duty was required to be paid on transaction value determined under section 4 of CEA 1944. The applicant

department has contended that biscuits cleared for export are not covered under section 4A since there is no legal requirement of fixing MRP/RSP on packages but the said goods having valuing less than Rs.100/- per kg. are exempted under Sr. No. 18A of Not. No. 3/06-CE dated 1.3.2006 amended. The respondent was required to clear the goods on nil duty rate as per provision of section 5A (1A) of CEA 1944. Therefore, applicant department argued that rebate claims were not admissible to the exporter.

10. Government notes that both Commissioner (Appeals) as well as applicant department admitted the non-applicability of section 4A of CEA 1944 for the export goods as there was no legal requirement to fix MRP/RSP on packages of export goods. In these cases the value of exported goods is less than Rs.100/- per kg. and therefore these are exempted from payment of duty as per Sr. No. 18A of Not. No. 3/06-CE as amended. The said entry of notification is extracted below :-

10.1	Sr. No.	Tariff Heading	Description of goods	Rate	Condition No.
	18	1905 3100 or 1905 9020	Biscuits	8%	-
	18A	1905 3100 or 1905 9020	Biscuits cleared in packaged form with per kg, retail sale price equivalent not exceeding Rs.100/..... .....	Nil	-

10.2 Government notes that the exported goods fall under entry above 18A and attract NIL rate of duty unconditionally. The said goods are being cleared for home consumption at Nil rate of duty. The exemption is related to value of goods and there is no condition of printing such value on packages for availing exemption. The respondent has not disputed that factual position about said value / RSP of the goods.


As such, Government is of the view that Commissioner (Appeals) has erred in holding that said exported goods are not exempted from duty under Sr. No. 18A of notification.

10.3 Government observes that said notification (Sr. NO. 18A) is very much applicable to the said goods cleared for export as there is no condition in the notification regarding printing RSP on packages. As per section SA(1A) of the Central Excise Act, 1944 where goods are exempted from payment of whole of duty unconditionally, there is no option to pay duty and the exemption has to be availed. So, in these cases, no duty was required to be paid. The duty paid on said goods cannot be treated as duty paid under the provisions of Central Excise Act 1944. Moreover, the CCE Thane-I vide order-in-original No. 5/BR-01/TH-I/09 dated 12.08.2009 has disallowed the Cenvat Credit availed on inputs used in manufacture of exempted biscuits and ordered for recovery of said cenvat credit with interest and also imposed penalty. As such export goods are not duty paid and rebate claim are not admissible under rule 18 of CER 2002 read with Not. No. 19/04-CE(NT) dated 6.9.2004.

11. In view of above discussion, Government sets aside the impugned orders-in-appeal and restores the impugned orders-in-original.

12. The revision applications thus succeed in terms of above.

13. So ordered.



(D P SINGH)

Joint Secretary (Revision Application)

The Commissioner of Central Excise,  
Thane-I Commissionerate,  
4<sup>th</sup> Floor, Navprabhat Chamber,  
Ranade Road, Dadar (W), Mumbai-28

14/2



(भागवत शर्मा/Bhegwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.E.C.-O.S.D. (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
बॉम्बे/मुंबई/Dept. of Indis  
या नवी दिल्ली/Now Delhi

G.O.I. Order No.128-130/2013-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 Assistant Commissioner, Central Excise Kalyan-IV, Division, Bhagwandas Mansion, Shivaji Chowk, Kalyan (West).
3. M/s Parle Products, situated at North Level Crossing, V.S. Khandekar Road, Vile Parle (East) Mumbai PS to JS(RA)
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

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