

REGISTERED
SPEED POST



F.No. 195/512/13-RA
F.No. 195/679/13-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...27/9/13

ORDER NO. 1283-1284 /13-Cx DATED 26.09.2013 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.35/SVS/PKL/2013 dated 18.1.13 & 32&33/CE/D-
II/13 dated 3.3.2013 passed by the Commissioner of
Central Excise (Appeals), Delhi-III & Delhi-II

Applicant : M/s Chemical Resources, Panchkula

Respondent : Commissioner of Central Excise, Delhi-III

ORDER

These revision applications are filed by M/s Chemical Resources, Panchkula against the order-in-appeal passed by the Commissioner of Central Excise (Appeals), Delhi-III and Delhi-II with respect to order-in-original passed by Deputy Commissioner of Central Excise, Panchkula Division as detailed below:

Sl.No.	R.A.No.	Against order-in-appeal No./Date	With reference to order-in-original No. & Date
1	195/512/13	No.35/SVS/PKL/2013 dated 18.1.13 passed by Commissioner of Central Excise (Appeals), Delhi-III, Gurgaon	126/R/DC/PKL dated 22.12.11 passed by Deputy Commissioner of Central Excise, Panchkula
2.	195/679/13	32&33/CE/D-II/2013 dated 3.3.13 passed by Commissioner of Central Excise (Appeals), Delhi-II, CR Building, New Delhi	53&54/R/DC/PKL/2011 both dated 21.6.11 passed by Deputy Commissioner of Central Excise, Panchkula

2. Brief facts of the cases are as under:

2.1 R.A.No.195/512/13: The applicants an 100% EOU, exported the goods on payment of duty and filed rebate claims which were rejected by the original authority on the ground that goods manufactured by 100% EOU are exempted from whole of duty absolutely under Notification No.29/03-CE dated 31.2.2003 *and* in terms of Section 5A(1A) of the Central Excise Act 1944, manufacturer has no option to pay duty and then claim rebate. Applicant filed appeal before Commissioner (Appeals) who rejected the same.

2.2 R.A.No.195/679/13: In this case the applicant's (100%EOU) rebate claims were sanctioned by the original authority. The said sanction order was reviewed

~~by Jurisdictional Commissioner of Central Excise (Appeals),~~ ^{under section 35E of Central Excise Act 1944} and department filed appeal before Commissioner (Appeals) who allowed the same in favour of department and set aside the impugned order-in-original. Commissioner (Appeals) ordered to recover the already sanctioned rebate claims along with interest.

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

3.1 The Department has gravely erred in rejecting the claims of the applicants, without appreciating that the same has been ordered to be refunded in terms of the Rule 18 of the Central Excise Rules after due compliance to the Notification laid under the said rule. It is pertinent to mention that the Commissioner (Appeals) has failed to appreciate that the aforesaid refund/rebate having been sanctioned to the Noticee is with regard to the unutilized Cenvat Credit after due adjustment of the same in terms of the provisions of the CENVAT Credit Rules 2004 read with the provisions of the Central Excise Rules, 2002.

3.2 The rejection of the rebate claims filed by the applicants have been made on the ground that the Noticee shall utilize the CENVAT Credit and then claim refund of the utilized Credit thereafter in terms of the provisions of the Section 5 of the Central Excise Act, 1944. The aforesaid plea of the department is solely on the basis of the mis-interpretation of the Notification No.05/2006 without appreciating that the said notification specifically provides for the refund of the unutilized credit which in the facts and circumstances of the case has been rightly claimed by the applicants by way of filling the rebate claim. It is pertinent to mention that the basic nature of the transaction being the payment to the

applicants by way of Cash refund thus there is no violation of the Central Excise laws.

3.3 The respondent has gravely erred in rejecting the alternative plea of the applicants in permitting for reversal of the amount paid as duty and thereafter claim refund of the same in the light of the decisions pointed out during the course of hearing and mentioned in the appeal memorandum. Thus the order is itself not a speaking order as no reference to the judgements had been made by the Appellate authority.

3.4 The impugned Orders are totally misconceived and are liable to be set aside on the sole ground that the same have been confirmed on the wrong appreciation of the provisions of the Central Excise Laws. The department has failed to appreciate the fact that the Applicants is an EOU and is registered with the Central Excise Office, also the manufactory of the applicants is working under the Customs Bond and their entire operations are physically supervised by the jurisdictional Central Excise Officers. Moreover the applicants has been regularly filling Excise Returns and regular Audits are being conducted by the Officers of Central Excise and at no point of time it has been pointed that the applicants are entitled to refund instead of rebate.

3.5 The Respondent has gravely erred in rejecting the citations referred by the applicants in support of the claims made by the applicants which is not only against the principles of Natural justice. However the Respondent is bound to follow the same and decide the issue as per the precedents laid down by the Hon'ble Authority in the catena of judgments.

3.6 The applicants would place reliance on the following Judgements relating to the instant issue which has already been decided in the cases of Flamingo

Pharmaceuticals Ltd. V/s Commissioner of Central Excise decided by Government of India vide Revision Order No. 1234-1236/2011-CX Dated 22.09.2011.

4. Personal hearing scheduled in this case on 30.8.13 was attended by Shri Saurabh Kapoor, Advocate and Shri Pawan Goel, Advocate on behalf of the applicant who reiterated the grounds of revision application. The applicants during the course of hearing stated that Hon'ble Punjab & Haryana High Court vide order dated 4.7.13 in W.P.No.12216/13 directed the Joint Secretary (Revision Application) to decide all revision applications pending before him within 3 months from the date of receipt of Hon'ble High Court order. As such both the above said applications, claimed to be pending by the applicant, are taken up for decision by this common order.

5. Govt. has carefully gone through the relevant case records and perused the impugned orders-in-original and orders-in-appeal.

6. In the instant case the Commissioner (Appeals) has disallowed the rebate claims on the ground that goods manufactured by 100% EOU are fully exempted from payment of duty and that in terms of Section 5A(1A) of the Central Excise Act, 1944, such fully exempted goods are debarred from payment of duty and therefore no rebate was admissible. Applicants have filed these revision applications on grounds mentioned in para (3) above.

7. In this regard Government notes that for proper understanding of the issue, the relevant provisions of Notification No.24/03-CE dated 31.5.03 under Section 5A(1A) may be perused which are extracted as under:

7.1 Notification No. 24/2003-CE dated 31-03-2003 states as follows:-

"In exercise of the power conferred by sub-section (1) of section 5A of Central Excise Act, 1944, (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of special Importance) Act, 1957 (58 of 1957) and sub-section (3) of section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby;

(a) Exempts all excisable goods produced or manufactured in an export oriented undertaking from whole of duty of excise leviable thereon under section 3 of Central Excise Act, 1944 (1 of 1944) and additional duty of excise leviable thereon under section 3 of additional Duty of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and addition duty of excise leviable thereon under section 3 of additional Duty of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

Provided that the exemption contained in this Notification in respect of duty of excise leviable under section 3 of said Central Excise Act shall not apply to such goods if brought to any other place in India;"

7.2 Sub-Section (1A) of Section 5A of the Central Excise Act, 1944 stipulates as follows:

"(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of excise leviable thereon has been granted absolutely the manufacturer of such excisable goods shall not pay the duty of excise on such goods."

7.3 The Notification No. 24/03-CE dated 31-03-2003 was issued under section 5A(i) of Central Excise Act 1944. The goods manufactured by 100% EOU and cleared for export are exempted from whole of duty unconditionally. Therefore in view of provisions of subsection (1A) of section 5A, the applicant manufacturer has no option to pay duty. Government notes that there is no condition for

availing exemption from payment of duty on goods cleared for exports. Normally the 100% EOU has to clear goods for exports as per the EOU scheme. Since there is no condition in the notification for availing exemption to goods manufactured by 100% EOU and cleared for export, the provisions of sub-section (1A) of section 5A(1) are applicable and no duty was required to be paid on such export goods. As such rebate claims were rightly held by Commissioner (Appeals) to be not admissible in terms of rule 18 of Central Excise Rule 2002. Government finds support from the observations of Hon'ble Supreme Court in the case of M/s ITC Ltd. Vs CCE reported as 2004 (171) ELT-433 (SC), and M/s Paper Products Vs CCE reported as 1999 (112) ELT -765 (SC) that the simple and plain meaning of the wordings of statute are to be strictly adhered to. CBEC has also clarified vide letter F.No. 2009/26/09-Cx dated 23.04.2010 (para 2) as under:-

"The matter has been examined, Notification No. 24/2003-CE dated 13.03.2003 provides absolute exemption to the goods manufactured by EOU. Therefore, in terms of Section 5A(1A) of the Central Excise Act, 1944. EOUs do not have an option to pay duty and thereafter claim rebate of duty paid."

7.4 In view of above position Government is of the view that in view of absolute exemption from whole of duty under Notification No.24/03-CE dated 31.3.03 the manufacturer had no option to pay duty as stipulated in the provisions of Section 5A(1A) of Central Excise Act 1944. The duty paid in these cases in violation of provisions of Section 5A(1A) cannot be treated as duty paid under the provisions of Central Excise Act/Rules. As such the said paid amount does not become a duty paid for the purpose of granting rebate under Rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04. As such, the said rebate claims are not admissible to the applicants. Government is in agreement with the findings of Commissioner (Appeals) in this aspect and finds no legal infirmity in the said orders-in-appeal to this extent.

7.5 Applicant has relied upon judgement dated 30.11.12 of Hon'ble Madras High Court in W.P.No.5667 of 2012 in the case of M/s Orchid Health Care Vs GOI wherein the rebate claim was held admissible to 100% EOU. In this regard, Government finds that said order of High Court was challenged by department before Double Bench of Hon'ble High Court of Madras in M.P.No.1 of 2013 in WA 260 of 2013. Hon'ble High Court vide order dated 14.2.2013 has granted interim stay of the operation of order dated 30.11.12. As such the ratio of said order dated 30.11.12 cannot be made applicable to this case.

8. Government notes that applicants have contended that alternatively they may be allowed recredit in their cenvat credit account of the said excess paid amount. The said amount paid by applicant without any authority of law is to be treated as voluntary deposit made with Government. Government notes that Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009 (235) ELT-22 (P&H) has decided as under:-

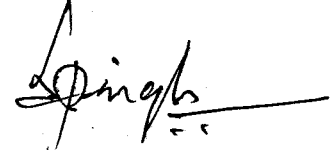
"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat Credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially. Therefore, Government directs that applicant may be allowed to take recredit of said amount in their

canvat credit account since Government cannot retain the same without any authority of law. The impugned orders-in-appeal are modified to this extent.

9. The revision applications are disposed of in terms of above.

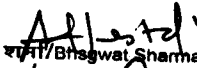
10. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Chemical Resources
Plot No.3A
Industrial Area Phase-II
Panchkula (Haryana)-134109

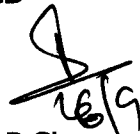

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (रखणस्व विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 1283-1284/2013-Cx dated 26.09.2013

Copy to:

1. Commissioner of Central Excise, Delhi-III, Central Revenue Building, Gurgaon, Haryana
2. Commissioner of Central Excise (Appeals), Delhi-III, C.R.Building, Gurgaon, Haryana
3. The Deputy Commissioner of Central Excise, Division Panchkula, Central Revenue Building, Panchkula.
4. Shri Saurabh Kapoor, Advocate, 11 Yadvindra Colony, The Mall, Patiala-147001
5. PA to JS (RA)
6. Guard File
7. Spare copy

ATTESTED



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