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SPEED POST

F.No. 198/646-648/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
3NEW DELHI-110 066

Date of Issue 4/4/17

ORDER NO. 1289-1291/13-Cx DATED 01.10.2013 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, 1944 against the Orders-in-Appeal No. BPS(92)42, 220, 221/2003 dated 25.3.2003 passed by the Commissioner of Central Excise (Appeals), Aurangabad.
APPLICANT	:	Commissioner of Central Excise & Customs, Aurangabad.
RESPONDENT	:	M/s Frigori Fico Allana Ltd., Aurangabad.

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Order

These revision applications are filed by the Commissioner of Central Excise & Customs, Aurangabad against the Orders-in-Appeal No. BPS(92)42, 220, 221/2003 dated 25.3.2003 passed by the Commissioner of Central Excise (Appeals), Aurangabad with respect to Orders-in-Original passed by the Assistant Commissioner, Central Excise, Aurangabad Division-I. M/s Frigori Fico Allana Ltd., Aurangabad is the respondent in this case.

2. Brief facts of the case are that the respondent are engaged in the manufacture of cooked meat, put up in unit containers, falling under Sub-Heading No. 1601.00 of the Central Excise Tariff attracting nil rate of duty and open top sanitary cans i.e. OTS cans falling under S.H.No.8007.00 which are subject to Central Excise duty. The OTS cans manufactured by them were consumed captively on payment of appropriate Central Excise duty. They had cleared the cooked meat put up in unit containers for export. The said cooked meat was packed in OTS cans manufactured by them. Since the final product was exported, the respondents filed various rebate claims under Rule 12(1)(b) of erstwhile Central Excise Rules, 1944 for the duty paid on OTS cans used in the manufacture of export goods under AR-5. The respondents were served with various of show cause notices proposing to reject the rebate claim on the grounds that it appeared from the Shipping Bills that the goods covered under relevant AR-5 had been exported by a merchant exporter named as "M/s Allana Sons Ltd.," and that the rebate claimed was not admissible inasmuch as the name of the merchant exporter did not appear on the AR-5, which was a condition mentioned in Trade Notice No. 2/96 issued from Aurangabad Commissionerate based on C.B.E.C. Circular No. 164/75/95/CX dated 18.12.1995 for sanctioning the rebate claim under Rule 12(1)(b) to a merchant exporter. The Assistant Commissioner, Central Excise & Customs, Aurangabad-I Division rejected the rebate claims filed by the respondents on the above said grounds. It

was further held that the respondents had not obtained the permission from the Commissioner for the manufacture and export of finished goods under claim for rebate as required under Notification No. 42/94-CE(NT) dated 22.09.1994, as amended.

3. Being aggrieved by the said orders-in-original, respondent party M/s Frigori Fico Allana Ltd. filed appeals before Commissioner (Appeal), who decided the same in their favour.

4. Being aggrieved by the impugned orders-in-appeal, the applicant department initially filed appeal before CESTAT, WZB, Mumbai, who vide order dated 26.8.2011 dismissed the appeal as not maintainable being beyond jurisdiction. Now, the applicant has filed these revision applications against impugned Orders-in-Appeal on various grounds, along with condonation of delay.

5. Show cause notice was issued to the respondent under Section 35EE of Central Excise Act, 1944 to file their counter reply. No counter reply received from the department.

6. Personal hearing scheduled in the case on 08.08.2013 was attended by Shri Chuna Ram, Assistant Commissioner, on behalf of the applicant who reiterated the grounds of revision application. Shri A.P. Kolte, advocate appeared for hearing on behalf of respondent and stated that the applicant department had filed Revision Application No. 198/84/05-RA against same impugned Orders-in-Appeal, which was rejected by G.O.I. Revision Order No. 57/2006 dated 30.01.2006 and as such these impugned applications filed against same Orders-in-Appeal, are not maintainable. He has produced the copy of said G.O.I. Revision order also.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the department's had earlier filed Revision Application No. 198/84/05-RA against the same impugned Orders-in-Appeal which was rejected by the G.O.I. vide Revision order No. 57/06-Cx dated 30.1.2006. The applicant department has not reported any order of High Court setting aside of above said G.O.I. order dated 30.01.2006 and remanding the case for denovo consideration. As such, Revision Applications filed for second time against said Orders-in-Appeal are not legally valid and hence, not maintainable. As such, the said Revision Applications are liable to be dismissed as non-maintainable.

9. The Revision Applications thus stand dismissed as being non maintainable.

10. So, ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

Commissioner of Central Excise and Service Tax,
Customs and Central Excise Commissionerate,
N-5, Town Centre, CIDCO, Aurangabad – 431003.

(Attested)

5/10

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

G.O.I. Order No.1289-1291/13-CX dated 01.10.2013

Copy to:-

1. The Commissioner of Central Excise & Customs (Appeals),, Town Centre, N-5, CIDCO, Aurangabad – 431003.
2. The Assistant Commissioner of Central Excise & Customs, Nanded Division, Aswan Building, Air Port Road, Nanded. Maharashtra.
3. M/s Frigori Fico Allana Ltd., Gevrai Village, Taluka-Paithan, Distt-Aurangabad, (Maharashtra)
4. Shri Abhay P. Kolte, Advocate, Suprabha, 49, Jeevan Society, Jyoti Nagar, New Osmanpura, Aurangabad – 431 005 (MS).
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

(Bhagwat P. Sharma)
OSD-I (Revision Application)