

**REGISTERED
SPEED POST**



**F.No. 195/08/12-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.....11/10/13.....

Order No. 1303/13-cx dated 10-10-2013 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 Order-in-Appeal No.
YDB (185) TH 1/2011 dated 22.07.2011
passed by Commissioner of Central Excise,
(Appeals), Mumbai-I.

Applicant : M/s. Monomer Chemical Industries Pvt. Ltd.,
Plot No. 32, Chemical Zone,
MIDC Industrial Area,
Ambarnath (W)-421501.

Respondent : Commissioner of Central Excise,
Mumbai.

ORDER

This revision application is filed by the applicant M/s. Monomer Chemical Industries Pvt. Ltd., Plot No. 32, Chemical Zone, MIDC Industrial Area, Ambarnath (W)-421501, against the Order-in-Appeal No. YDB (185) TH 1/2011 dated 22.07.2011 passed by Commissioner of Central Excise (Appeal), Mumbai-I, with respect to Order-in-Original No. R-207/11-12 dt. 21-04-2011 passed by the jurisdictional Deputy Commissioner (Appeals), Central Excise, Kalyan Division-IV, Central Excise Committee, Thane, Mumbai.

2. Brief facts of the case are that M/s. Monomer Chemical Industries Pvt. Ltd., Plot No. 32, Chemical Zone, MIDC Industrial Area, Ambarnath (W)-421501 are engaged in the manufacture of excisable goods falling under chapter 32 of the schedule to the Central Excise Tariff Act, 1985 and registered with Central Excise Department and holding Central Excise Registration No. AAACM7313HXM001. The claimant's aforesaid manufacturing unit was converted in to a 100% Export oriented undertaking with effect from 15-10-2010 as per the LOP No. PER: 05 (2009)/SEEPZ-SEZ/EOU/13/09-10-8325 to 8328 dated 06-08-2009, as amended issued by the development Commissioner, SEEPZ Special Economic Zone, Andheri (East), Mumbai-400096 and the Customs Banded ware House Registration No. V. Gen (30)36/Monomer Chem (100% EOU)/Unit No. 3/T-33/K-IV/10/3728 dt. 15-10-2010 granted by this office under section 58 and 65 of the Customs Act, 1962. The claimants have filed with this office following four rebate claims in Form C claiming rebate of duty paid on the goods manufactured and exported by them:

Sr. No.	Date of filing claim	ARE-1 No. & Dt.	Central Excise Invoice No. & Dt.	Shipping Bill No. & Dt.	Bill of lading No. & Dt.	Date of Shipment	Amt of Rebate claimed (Rs.)
1	10-01-2011	76/10-11 dt. 15-10-2010	6957232 dt. 18-10-2010	8957232 dt. 18-10-2010	SAFM 752227598 dt. 24-10-2010	24-10-2010	1,11,801/-

2	02-02-2011	78/10-11 dt. 15-10-2010	8954349 dt. 16-10- 2010	8954349 dt. 16-10-2010	SAFM 752227533 dt. 27-10- 2010	21-10- 2010	2,45,514/-
3	02-02-2011	79/10-11 dt. 15-10-2010	8954317 dt. 16-10- 2010	8954317 dt. 16-10-2010	SAFM 752227533 dt. 27-10- 2010	21-10- 2010	87,478/-
4	02-02-2011	80/10-11 dt. 15-10-2010	8954296 dt. 16-10- 2010	8954296 dt. 16-10-2010	SAFM 752227533 dt. 27-10- 2010	21-10- 2010	33,150/-
Total							4,77,943/-

On preliminary scrutiny of the claims, it appeared that the claimants have cleared the goods for export on payment of duty through their cenvat credit account under all the aforesaid four ARE-1s on 15-10-2010 i.e, the very same day on which the claimant's aforesaid manufacturing unit was converted into 100% EOU. Further, it appeared from Notification No. 24/2003-CE dt 31-02-2003 that the goods manufactured and cleared for export by 100% EOUs are fully and absolutely exempted from payment of duty and as per the provisions of section 5A (!A) of the Central Excise Act, 1944, when the goods are absolutely exempted, the claimants are legally bound to avail the said exemption and have no option to clear the goods for export on payment of duty. Further, Rule 17 of the Central Excise Rules, 2002 lays down that the Cenvat Credit can be utilized by the 100% EOUs only in respect of their DTA clearances on payment of duty. Therefore, it appeared that the claimants have exported the goods from their 100% EOU on payment of duty, when actually no such duty was legally required to be paid and in contravention of the aforesaid provision of Central Excise Act, 1944 and Central Excise Rules, 2002. As such, the amount claimed to have been paid as Central Excise Duty/Education cess/She cess at the time of clearance, of the goods under the aforesaid four ARE-1s cannot be legally considered as Central Excise Duty/Education cess/She cess paid under the enactments viz. Central Excise Act, 1944, Finance (No. 2) Act, 1994 and Finance Bill, 2007. Further, as per the provisions of Rule 18 of the Central Excise

Rules, 2002 read with Notification No. 19/2004-CE (NT) dt. 06-09-2004 as amended, only Central Excise Duty/Education cess/She cess interalia paid which are legally required to be paid under the enactments viz. Central Excise Act, 1944, Finance (No. 2) Act, 1944 and Finance Bill, 2007 are eligible for sanction as rebate. Therefore the amounts Central Excise Duty/Education cess/She cess claimed as paid by the claimants in the present ARE-1s and rebate claims in respect of the aforesaid clearances cannot be legally considered as Central Excise Duty/Education cess/She cess paid under the said enactments namely Central Excise Act, 1944 Finance (No. 2) Act, 1944 and Finance Bill, 2007 for the purpose of grant of rebate under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE (NT) dt. 06-09-2004 as amended. In view of the foregoing, it appeared that all the aforesaid four rebate claims are liable to be rejected. In this background, the the adjudicating authority rejected the said rebate claims of Rs. 4,77,943/-.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The applicant would like to state that the main reason for rejecting the rebate claim is on the ground that when exemption is granted under section 5A (1A) of Central Excise Act, 1944 the manufacture should not pay Excise Duty. Thus, 100% EOU is bound by Not. No. 24/2003 CE dt. 31-03-2003 read with section 5A (1A) and cannot pay Excise Duty on exports.

4.2 The applicant would like to state that Appellate Authority has solely relied on section 5A (1A) to reject the refund claim. The impugned section reads as follows:

Section 5A (1A) for the removal of doubts. It is here by 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, in the manufacture of such excisable goods.

4.3 On reading of the above relevant extract of the section it can be seen that the impugned section is applicable duty in a situation wherein the exemption has been granted absolutely. However, Not. No. 24/2003 CE dt. 31-03-2003 lays down a condition for grant of exemption. The applicant would like to submit that the condition laid down in the proviso to the notification, Supra. The relevant part of the notification, supra is reproduced here below:

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 such goods if brought to any other place in India.

4.4 The applicant would like to again reiterate that section 5A (1A) is applicable only in situation wherein absolute exemption wherein non conditions are prescribed. However, the Not. No. 24/2003 CE dt. 31-03-2003 dose not grant absolute exemption since a condition is prescribed. The applicant would like to state that the exemption granted by the Not. No. 24/2003 CE dt. 31-03-2003 is not applicable if EOU clears excisable goods to any other place in India and such clearance would be chargeable to excise duty.

4.5 The applicant would like to submit that since it is not an absolute exemption granted, hence section 5A (1A) of the Central Excise Act, 1944 is not applicable and the applicant has the option to clear the goods for export on payment of duty.

4.6 The applicant would like to submit that ARE-1s have been submitted to the Range Supdt. and he has endorsed the same and has explicitly indicated that the goods can be exported on payment of duty. The copies of the same have been enclosed as Exhibit-D. Hence, it is incorrect and unlawful to state that the duty was not payable as par law and hence it cannot be refunded.

5. Personal hearing was scheduled in this case on 25-09-2013 was attended by Shri Mahendra Madhav Gokhle, Excise Officer on behalf of the applicant who reiterated the grounds of Revision Application.
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 applicant manufacturing unit was converted into 100% EOU unit w.e.f. 15-10-2010 as per OP No. per: 05 (2009) SEEPZ-SEZ/EOU/13/09-10/8325 to 8328 dt. 06-08-2009 issued by Development commissioner SEEPZ-SEZ, Mumbai and as per approval of Customs bonded warehouse vide Registration no. V. Gen (30) 36/Monomer Chem (100% EOU) unit No. I/T-II/K-IV/10/3728 dt. 15-10-2010 granted by customs under section 58 and 65 of Customs Act, 1962. Applicant cleared excisable goods on payment of duty same day on 15-10-2010 vide ARE-1 Nos. 76,78,79, 80/10-10 all dt. 15-10-2010 and exported the same on 24-10-2010 and 21-10-2010. Four rebate claims of Rs. 4,77,943/- were filed under Rule 18 of Central Excise Rules, 2002 r/w Not. No. 19/04-CE (NT) dt. 06-09-2004. After following due process of law, adjudicating authority rejected the said rebate claims. Commissioner (Appeals) upheld the rejection of said claims. Now, applicant has filed this revision application on the grounds stated above.
8. Applicant has mainly contended that the Not. No. 24/03-CE dt. 31-03-2003 is a conditional notification since DTA clearances are not exempted from payment of duty and therefore section 5A (1A) of Central Excise Act, 1944 is not applicable in this case as held by lower authorities.
 - 8.1 In order to under stand the issue, it is necessary to go through the provision of Notification No. 24/03-CE dated 31.03.03 and section 5A(1A) of Central Excise Act, 1944 which are extracted below:
 - 8.2 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;"

8.3 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."

8.4 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 inadmissible 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."

8.5 As regards, applicant's contention that duties/taxes are not to be exported, Government notes that these are various scheme in operation which neutralize the effect of duty incident on the exported goods. Each scheme is governed by the conditions/limitations and procedures laid down in the notification. In this case the provisions of section 5A(1A) of Central Excise Act 1944 put embargo on payment of duty since goods were exempted from payment of whole of duty un conditionally. However, the unutilized Cenvat Credit is permitted to refunded under rule 5 of Cenvat Credit Rules, 2004 and the said facility is not availed by applicant.

9. In view of above position, rebate claims are not admissible to the applicant under rule 18 of Central Excise Rules, 2002 r/w Not. No. 19/04-CE (NT) dt. 06-09-2004. However Government observes that duty without any authority of law is to be treated as voluntary deposit made by applicant with Government which is required to be returned in the manner in which it was paid. Hon'ble High Court of Punjab and Haryana at Chandigarh vide order dt. 11-09-20008 in CWP No. 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 held as under:-

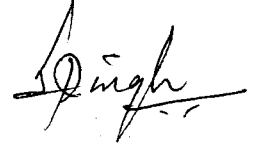
"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion 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, the original authority is directed to allow re-credit in Cenvat credit account of said amount.

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

11. So, ordered.



(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Monomer Chemical Industries Pvt. Ltd.,
Plot No. 32, Chemical Zone,
MIDC Industrial Area,
Ambarnath (W)-421501.

ATTESTED



(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

Order No. 1303/13-Cx dated 10-10-2013

Copy to:

1. The Commissioner of Central Excise, The Commissioner of Central Excise, Thane-I, 4th Floor, Navprabhat Chamber, Ranade Road W), Mumbai-28.
2. The Commissioner of Central Excise (Appeals), Mumbai-I.
3. The Assistant Commissioner, Commissioner Central Excise, Kalyan-IV, Division.
4. ~~PS to JS (RA)~~
5. Guard File.
6. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)