



REGISTERED  
SPEED POST

**F.No.195/230/2012-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue. 29/1/16

**ORDER NO. 14/2016-CX Dated 25.01.2016** OF THE GOVERNMENT OF INDIA,  
PASSED BY SMT. RIMJHIM PRASAD, 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. YDB/05/M-I/2012 dated 16.01.2012  
passed by Commissioner of Central Excise  
(Appeals), Mumbai

APPLICANT : M/s Great India Industrial and Pharmaceutical Ltd.

RESPONDENT : Commissioner of Central Excise, Mumbai-I.

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## **ORDER**

This revision application is filed by M/s. Great India Industrial and Pharmaceutical Laboratories, Mumbai (hereinafter referred to as the applicant) against the Order-in-Appeal No. YDB/05/M-I/2012 dated 16.01.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to Order-in-Original No. GH/R/11/SVP/2011-12 dated 28.09.2011 passed by the Assistant Commissioner of Central Excise, Division-GH, Mumbai-I

2. Brief facts of the case are that the applicant had cleared goods for export under A.R.E-2 No. 17/2010-11 dated 23.02.2011 and invoice Nos. 205 and 206, both dated 23.02.2011 under UT-1/7-02/GH/2010-11 dated 01.04.2010. They have filed rebate claim amounting to Rs. 61,181/- with the jurisdictional Assistant Commissioner, under Notification No. 21/2004-CE (NT) dated 06.09.2004, issued under Rule 18 of Central Excise Rules, 2002, for the inputs used in the manufacture of finish products and exported vide above mentioned A.R.E.2 and invoice. The respondent vide his above mentioned order, sanctioned amount of Rs. 19,256/- as a rebate claim and remaining amount of Rs. 41,316/- and Rs. 608/- have been rejected. While rejecting the amount of Rs. 41,316/- lower authority has given the reason that the applicant have not submitted documentary evidence/records to establish the actual receipt of inputs and its utilization in the manufacture of the finish goods exported under A.R.E-2 No. 17/2010-11 dated 23.02.2011.

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 Commissioner (A) has erred while upholding the Order-in-Original as all relevant records were placed before him. Without going in to relevant records in detail the authority has reached to conclusion that inputs were not accounted for. While reaching to that conclusion appellate authority has relied upon invoice for bottles received from M/s Janta Glass Ltd. Commissioner (A) has observed that in said stock register entry shown is in the name of M/s Jai Glass Works and not M/S Janta Glass Ltd. and reached to conclusion that applicant could not prove the actual receipt of input and its utilization in the manufacture of finished goods exported under ARE-2 No.17/2010-2011 Dated 23-02-2011.

4.2 While rejecting the Rebate claim of Rs. 608/- in respect of wastages during the manufacturing of the Export goods the Commissioner (A) has observed that

reliance cannot be placed upon the order of Joint Secretary (R.A.) as it is de novo and not final. It is great surprise that for not deciding the case Commissioner (A) has taken the shelter of Joint Secretary order on technical ground but Commissioner (A) has even not bothered to apply the directions of Joint Secretary (RA) which is in the similar case of appellant only and squarely applicable in present case as well. The order of Joint Secretary (RA) is lying pending for finalisation in the office of the Commissioner (A) himself only which is also binding on Commissioner (A).

4.3 Commissioner (A) contention that delay was on the part of appellant is not true and not correct therefore not acceptable on the ground that deficiency memo was not issued at one go, a considerable time was lapsed from date of filing of declaration, date of actual export and date of filing rebate claim. Mandatory 30 days notice period was not allowed and entire process of enquiry was initiated much late by the Authority and Notice of Show Cause was issued after expiry of 90 days from date of submission of rebate claim by that time limit the Rebate claim should have released.

4.4 Applicant do not agree with the observation of Commissioner (A) the relevant information was filed on 27.09.2011 and Order-in-Original was signed on 26.09.2011 and Range Superintendent has requested vide his letter dated 06.09.2011 to submit the information by 09.09.2011 was received by the appellant on 14.09.2011 and the reply was submitted on 15.09.2011 immediately. The Superintendent has called detailed information from the appellant vide letter dated 19.09.2011 to furnish accounts (Stock register) for the period from April 2007, was received by the appellant on 22.09.2011 (Thursday) and also simultaneously the range Superintendent. Vide letter F.No. C.Ex./RIII/ Dn.GH/IGIPLA/2011 dated 20.09.2011 submitted his verification report. And Order-in-Original was signed by the Asst. Commissioner on 26.09.2011, It is fact, The appellant hand delivered the accounts (Stock register) from April 2007 on 27.09.2011 (Tuesday) within two working days from the receipt of the Superintendent letter dated 19.09.2011. Your honour can observe that there was no intentional delay on part of Appellant. But after considerable delayed by the department it was hurried up with the intention of depriving the rights of the Appellant.

5. Personal Hearing in this case held on 23.06.2015 and 07.07.2015. Nobody attended personal hearing. Department vide letter dated 03.07.2015 mainly reiterated contents of impugned orders. The applicant vide letter dated 19.06.2015 mainly reiterated grounds of R.A.

6. Government has gone through the relevant case records/available in case files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that applicant exported the goods and filed rebate claim total amounting to Rs. 61,181/- of duty paid on inputs under notification no. 21/2004-C.E.(N.T.) dated 06.09.2004 read with Rule 18 of Central Excise Rule,2002. The original authority sanctioned part rebate claim of amount Rs. 19256/- and remaining amount of Rs. 41,316/- and Rs. 608/- has been rejected. The rebate claim amounting to Rs. 41,316/- was rejected on the ground that the applicant could not substantiate that the actual receipt of inputs and its utilization in the manufacture of final product could not be established. Amount of Rs. 608/- has been rejected on ground that this amount is with respect to wastage arising due to manufacturing, which was not exported. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this R.A as grounds mentioned in para above.

8. Government observes that the original authority rejected part amount of Rs. 41,316/- on ground that applicant failed to establish correlation between actual receipt of inputs and its utilization in the manufacture of final product. The appellate authority has held that in stock register receipt of bottle found to be in name of M/s. Jai Glass works, whereas applicant claimed to have received the same from M/s. Janta Glass. In this regard, the applicant contended that appellate authority has verified the stock register in isolation and should have been verified the same along with relevant invoices which indicate as M/s. Janta Glass Ltd., as the manufacture M/s. Jai Glass works as registered dealer and M/s. Great India Industrial and Pharmaceutical Laboratories as consignee.

8.1 On perusal of sample copies of documents submitted by the applicant, Government observes that invoices raised by M/s. Janta Glass Ltd, indicates name of M/s. Jai Glass works as dealer and M/s. Great India Industries and Pharmaceutical Ltd. (the applicant) as consignee. Further the invoice raised by M/s. Jai Glass works in the name of applicant also tallies with respect to quantity, no of packages, Truck No. L.R. No., Description etc. Under such circumstances, mere reliance on stock Register in isolation cannot be a basis of reaching to a conclusion that applicant failed to prove that duty paid inputs have been used in manufacture of final product. As such, the issue needs to be re-examined in light of all relevant documents to ascertain use of duty paid inputs in manufacturing of final exported products. The original authority is required to carry out the said verification on the basis of original documents and arrive at a decision as to whether the impugned inputs were received and utilized in the manufacture of the impugned export goods or not.

9. As regard to issue of wastage during manufacture of final export product, Government observes that the said issue has been dealt by the GOI in the case of the same applicant vide Revision Order No. 1109-1118/11-CX dated 29.08.2011 and

the matter was remanded back to appellate authority with certain observations. Ratio of above said Revision order will be applicable to this case also, and this case is also remanded to the original authority to decide this specific issue in the light of observations made in GOI order dated 29.08.2011, on this aspects.

10. As regard to issue of interest, Government notes that interest is supplementary of admissibility of rebate claim and issue of interest may be decided as per law, on the basis of decision regarding admissibility of rebate claim in remand proceedings.

11. In view of above discussion, Government sets aside impugned Order-in-Original and remands the case back to original authority to decide the same afresh in view of above observation. Sufficient opportunity of hearing be afforded to concerned parties.

12. Revision Application is disposed off in above terms.

13. So, ordered.



**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

M/s.Great India Industrial and  
Pharmaceutical laboratories,  
19, Sun Mills Compound, Lower Parel,  
Mumbai-400013

Attested.


(Signature)  
सहायक निदेशक (आयकर),  
CBEL, (आयकर),  
वि. नि. (आयकर),  
Ministry of Finance (Income Tax),  
18991/ New Point

**ORDER NO. 14/2016-CX Dated 25.01.2016**

Copy to:

1. Commissioner of Central Excise, Mumbai-I Commissionerate, 115, New Central Excise Building, M.K.Road, Opp. Churchgate Station, Mumbai-400012.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Dadi Seth Lane, Chowapatty Mumbai-400007
3. The Assistant Commissioner of Central Excise, Division: GH Mumbai-1, 2<sup>nd</sup> Floor Madhu Industrial Estate P.B.Marg, worli, Mumbai-400013
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

Attested.

  
(B.P. Sharma)  
OSD (RA)  
Mumbai Zone-I  
Mumbai-400007  
Mumbai-400007