



**REGISTERED  
SPEED POST**

**F.No. 198/187-A/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)**

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

Date of Issue...12/4/14

Order No. 150 /14-cx dated 15-4-2014 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. 22/2012 (M-I) and 02/12 (M-I) D both dated 21.03.2012 passed by Commissioner of Central Excise, (Appeals), Chennai.

Applicant : Commissioner of Central Excise, Chennai.

Respondent : M/s. Goyal Metal Industries (P) Ltd., III B-No.9, MC Nichols Road, Cheput, Chennai-600031.

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ORDER

This revision application is filed by Commissioner of Central Excise, Chennai against the Orders-in-Appeal No. 22/2012 (M-I) 02/12 (M-I) D dated 21.03.2012 passed by Commissioner of Central Excise (Appeals), Chennai. M/s. Goyal Metal Industries (P) Ltd. is the respondent in this case.

2. Brief facts of the case are that M/s. Goyal Metal Industries (P) Ltd. are merchant exporters of M/s. United Metal Industries, who are manufacturers of non-alloy steel falling under chapter 72 of CETA, 1985. M/s. Goyal Metal Industries (P) Ltd. had filed various rebate claims. The brief history of the case as reported in impugned Order-in-Original is given under:-

- In 1997, the goods falling under chapter 72 were brought under compounded Levy Scheme. The Commissioner provisionally determined the ACP of hot re-rolled products as per the provisions of "Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997" and fixed the amount payable as Rs. 5,68,875/- per month vide sub rule (4) of Rule 3 read with Rule 5 of the said Rules and finalised vide Commissioner's order dated 26-03-1998.
- The validity of said Rule 5 was challenged by various manufacturers including the M/s. United Metal Industries before the court of law. They claimed that ACP as per Rule 3 of the said Rules, the duty liability was only Rs. 1,90,331/- and were paying the same.
- A Show Cause Notice was issued in this regard and an Order-in-Original bearing No. 3-7/2003 dated 27-03-2003 was passed by the Commissioner wherein a duty liability of Rs. 1,17,84,627/- was confirmed against the said manufacturer and penalty of Rs. 1,17,84,627/- was imposed.
- M/s. United Metal Industries filed an appeal before the Hon'ble CESTAT and the same is pending as on date Notwithstanding the above, they had paid the

duty liability of Rs. 1,17,84,627/- and amount of Rs. 61,55,326/- only was paid towards interest and Rs. 29,33,716/- was only paid towards penalty as per Madras High Court order in CMA 2769/2005 dated 23-03-2007.

2.1 Originally, M/s. Goyal Metal Industries (P) Ltd., the Merchant Exporter of M/s. United Metal Industries had filed 10 rebate claims and all the claims were rejected vide Order-in-Original No. 47/98 dated 30-10-1998, 34 & 35/99 dated 30-07-1999, 5-7/99 dated 31-01-2000, 20/2000 dated 28-03-2000, 25/2000 dated 31-03-2000, 29/2000 dated 26-06-2000 and 51/2000 dated 27-11-2000.

2.2 Aggrieved by the above orders the assessee preferred appeal before Commissioner (Appeals) passed the Orders-in-Appeal No. 19/2000 (M-I) dated 31-01-2000, 20/2000 (M-I) dated 15-02-2000, 21/2000 (M-I) dated 15-02-2000, 59-61/2000 (M-I) dated 24-04-2000, 123/2000 (M-I) dated 23-12-2000, 09-11/2006 dated 23-01-2006 for above stated OIOs respectively. Commissioner (Appeals) had rejected the claims stating that the duty liability has not been discharged fully.

2.3 Aggrieved by these Orders-in-Appeal, the assessee filed Revision Application (for first Order-in-Appeal) and GOI vide Revision Order No. 60-67/04 dated 29-03-2004 allowed the rebate claims stating that " rebate will be allowed even in cases, where manufacturer makes delayed payment of duty under provisions of Central Excise Rules, 1944 in respect of periods where export goods were cleared. The claims were however subjected to verification and other conditions. In the mean while, the Commissioner of Chennai-I passed order-in-Original Nos. 3 to 7/2003 dated 27-03-2003, wherein a duty liability of Rs. 1,17,84,627/- was confirmed against the said manufacturer and penalty of Rs. 1,17,84,627/- was imposed. The manufacturer paid the duty amount fully but only a part of interest and penalty.

2.4 Since the revision order passed by GOI stated that the rebate will be allowed even in cases, where manufacturer makes delayed payment of duty under provisions of Central Excise Act, 1944, rebate claims were filed afresh, as consequential relief.

2.5 Hence the Assistant Commissioner, 'D' Division passed 10 Orders-in-Original as detailed below sanctioning the rebate on the grounds that the assessee had discharged the duty liability in full.

Sl. No.	OIO No. & date	Amount
1	24/05 dt. 13-06-2005	739386
2	25/05 dt. 15-06-2005	910112
3	26/05 dt. 20-06-2005	1179437
4	27/05 dt. 20-06-2005	1084722
5	30/05 dt. 27-06-2005	1367926
6	31/05 dt. 29-06-2005	708980
7	33/05 dt. 04-07-2005	654590
8	34/05 dt. 03-08-2005	969482
9	35/05 dt. 04-08-2005	886839
10	36/05 dt. 05-08-2005	862707
<b>Total</b>		93,64,181/-

2.6 On review of the said Orders-in-Original the Commissioner directed the ACCE to file an application before the Commissioner (Appeals) for setting aside the above stated Order-in-Originals.

2.7 The assessee filed an appeal against another Order-in-Original No. 06/06 dated 30-03-2006 (involving rejection of refund claim of Rs. 1551500/-) before Commissioner (Appeals).

2.8 The above said two appeal one filed by department and other by party were decided by the Commissioner (Appeals) vide Order-in-Appeal No. 52/2007 (M-I) and 06/2007 (M-I) (D) both dated 31-07-2007, wherein the matter was remanded to Original authority for deciding the issue afresh as soon as main issue attains finality.

2.9 Aggrieved by this Order-in-Appeal the assessee filed a revision application before the GOI. The GOI vide their Revision Order No. 870/10-CS dated 24-05-2010

set aside the Order-in-Appeal No. 52/2007 (M-I) and 06/2007 (M-I) (D) dated 31-07-2007, and directed the Commissioner (Appeals) to decide the case on merit and not to keep the case pending indefinitely.

2.10 Based on this direction of GOI, Commissioner (Appeals) has now passed Order-in-Appeal No. 22/2012 (M-I) and 02/2012 (M-I) (D) dated 21-03-2012, which is under review. Commissioner (Appeals) in his findings has observed the following:

- The delayed payment of duty by the manufacturer in the instant case does not debar the assessee from claiming rebate. He placed reliance on Revisionary Order No. 870/2010 dated 24-05-2010, wherein it was stated that the clarificatory portion of CBEC Circular No. 418/51/98-CX dated 02-09-1998 says that 'the rebate will be allowed even in cases where the manufactures make delayed payment'. He also placed reliance on Hon'ble Supreme Court Judgment in Omkar Overseas Ltd. Vs UOI reported in 2003 (156) ELT 167 (SC) wherein it was held that 'once it has been held that there was no fraud, collusion or any wilful to pay the duty then the exporter cannot be denied rebate'.
- He also stated that non-payment of penalty an interest should not be linked to rebate.
- He also stated that with regard to rebate, on perusal of Notification No. 31/98-CE (NT) dated 24-08-1998 and Board' Circular No. 418/51/98-CX dated 02-09-1998 it is clear that neither the said notification nor the circular lays down any condition that for entitlement of 12% of FOB value the duty paid should be higher than the rebate claimed.

3. Based on the above findings, Commissioner (Appeals) has allowed the appeal filed by the assessee and set aside the Order-in-Original No. 06/2006 RF dated 30-03-2006 and upheld the Order-in-Original Nos. 24-27/2005, 30,31,33-36/2005 of the orders passed by Original authority sanctioning rebate claims and rejected the department appeals.

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 M/s. United Metal Industries have filed appeal before CESTAT, Chennai vide E/1389/04 and E/354/03 that as to whether the ACP of the manufacturer shall be determined under Rule 3 or Rule 5 of the "Hot Rerolling determination Rules, 1977". M/s. United Metal Industries have paid duty + 50% of interest + 25% penalty as per the Hon'ble Madras High Court order in CMP 2769/2005 dated 23-03-2007. But this issue has not reached finality and M/s. United Metal Industries have not discharged duty with interest and penalty in full. Any belated payment of duty can be considered as payment in full only when the duty is paid along with interest. The fact remain that M/s. United Metal Industries appeal before CESTAT's larger bench is pending in E/1389/04 and E No. 354/03 and also an appeal before Hon'ble Supreme court challenging the fixation of ACP under rule 5 of Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 has not reached finality.

4.2 The duty has not been discharged by the manufacturer, M/s. United Metal Industries at the time of clearance as required under Rule 19 of Central Excise Rules, 2002 and connected instructions issued therein but only as per Hon'ble Madras High Court order in CMP No. 2769/2005 and filed the refund claim. In such cases, no claim of refund can be filed under section 11B as the issue still to be decided by the higher appellate forum.

4.3 Without prejudice to the above, on consideration of the applicability of rebate @ 12% of FOB in terms of Notification No. 31/98-CE (NT) dated 24-08-98, it is seen that the period covered in OIO Nos. 24/2006, 25/05, 26/05, 26/05 and part amount of OIO No. 27/05 were prior to the issue of Notification No. 31/98 dated 24-08-98. But the Commissioner (Appeals) has passed order that the rebate @ 12% of FOB value even for the earlier period 01-08-97 to 23-08-98 can be given, which is not in order. The rates prescribed as per Notification No. 31/98 CE (NT) cannot apply to compounded levy schemes.

4.4 In view of the foregoing reason Order-in-Appeal No. 22/2012 (M-I) and 02/2012 (M-I) (D) dated 21-03-2012 passed by the Commissioner (Appeals) is not legal and proper and the said Order-in-Appeal may be set aside and the GOI may pass such orders as deemed fit in the facts and circumstances of the case and in the interest of justice.

5. The Show cause notices were issued to the respondents under section 129DD of Central Excise Act, 1944 to file their counter reply. The respondent in their written reply mainly reiterated the findings of Commissioner (Appeals) in the impugned Order-in-Appeal dated 21-03-2012.

6. Personal hearing was scheduled in this case on 20-03-2014 & 21-03-2014 at Chennai was attended by Dr. S.Periyannan, ACCE, 'D' Division, Chennai-I on behalf of the applicant department who reiterated the grounds of Revision Application. Shri M.Karthikeyan, advocate attended hearing on behalf of the respondent who pleaded to uphold the impugned Order-in-Appeal.

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

8. The department has mainly contended that respondent has filed appeal before CESTAT Chennai as to whether ACP of the manufacturer shall be determined under rule 3 or 5 of the "Hot re-rolling determination Rules 1997 and also an appeal is pending before Supreme Court challenging fixation of ACP under rule 5 that any belated payment of duty can be considered as payment in full only when the duty is paid along with interest; that of rebate @ 12% of FOB value in terms of Notification No. 31/98-CE (NT) dt. 24-08-98 cannot be applied for the period prior to 24-08-98.

9. Government notes that in these cases during the relevant time, the rebate was admissible @ 12% of FOB value under rule 12 of Central Excise Rules, 2002, in terms of Notification No. 31/98-CE (NT) dt. 24-08-98. So the determination of ACP will not alter the rate of rebate claim mentioned above. Applicant has already paid

the entire duty as per ACP fixed by Commissioner of Central Excise though CESTAT has granted stay against Order-in-Original passed by CCE. The revisionary authority in its GOI Revision order No. 60-67/04 dated 29-03-2004 had held as under:-

*"From the perusal of the record, Govt. observes that the dispute before CESTAT Chennai is whether ACP of the manufacturer shall be determined under Rule 3 or Rule 5 of the "Hot Rerolling Mills Annual Capacity Determination Rules, 1997". The manufacturer has subsequently paid the entire duty amount involved in this case though the applicant has obtained stay from Hon'ble CESTAT against recovery of duty and penalty. The revisionary authority vide its order no. 60-67/2004 dated 29.3.2004 had held as under :*

*"During the course of personal hearing, the applicant has stated the view that without prejudice to their main pleadings of their claims being rightful despite being more than duty actually paid, they will in any case be entitled to full rebate as claimed in terms of Board's Circular No. 418/51/98-CX dated 2.9.98 as and when duty as determined by Commissioner's Order as per relevant rule is fully paid by the manufacturers. Govt. finds force and concurs with the view of the applicant in view of the self explanatory and clarifactory portion of CBEC Circular No. 418/51/98-CX dated 2.9.98 extracted as per para 15 above which clarifies: "That rebate will be allowed even in cases where manufacturers makes delayed payment." The Supreme Court's judgement in Omkar Overseas Ltd. Vs. UOI 2003 (156) ELT 167(SC) cited by Applicants also supports this view. Claims will, however, be subject to verification and other conditions in such eventuality."*

Government notes that in view of CBEC clarification in Circular No. 418/51/98-Cx dt. 02-09-98, rebate will be allowed even in cases where manufacturer makes delayed payment. The respondents had made delayed payment of duty in these case and rebate claim was rightly held admissible to the respondents in terms of said CBEC circular.

10. Government notes that issue regarding admissibility of rebate @ 12% of FOB value during the period 01-08-97 to 23-08-98 has been allowed in CBEC circular No. 473/39/99-Cx dt. 27-07-99 (F. 209/05/98-Cx-6). The said circular is reproduced below:-

*" Subject : Rebate of excise duty paid on ingots and billets of non-alloy steel and hot re-rolled products of non-alloy steel notified under section 3A of the Central Excise Act, 1944 for the period from 1.8.97 to 23.8.98 - Instructions regarding*

*I am directed to say that a doubt has arisen whether the rebate of central excise duty paid on ingots billets of non-alloy steel and hot re-rolled products of non-alloy steel notified under section 3A of the Central Excise Act, 1944 for the period from 1.8.97 (the day re-*



rolled material and induction furnace goods were covered under this levy based on capacity of production) and 23.8.98 (the preceding day to the date when notifications providing method of computation of rebate were issued) can be granted in respect of the goods removed from the factory of independent manufacturers and exported or the raw material removed from the factory of independent manufacturers for manufacture of export goods, during this period and whether the rates / method of computation of rebate prescribed in Notification nos. 31/98 (NT) to 33/98 (NT) all dated 24.8.98 [hereinafter referred to as the said notifications] can be applied for granting of such rebates.

2. The Board has examined the matter in consultation with Ministry of Law, Justice and Company Affairs. It is seen that the right to get rebate on exports emanated from rule 12 read with notification No. 41/94-CE (N.T.) dated 22.9.94 in case of export of finished excisable goods, notification No. 42/94-CE (N.T.) dated 22.9.94 in case of raw materials used in the manufacture of export goods and notification No. 50/94-CE (N.T.) dated 22.9.94 in case of exports to Nepal. However after the goods were notified under section 3A, the identification of the duty paid on exports became difficult, the said notifications were issued which simply provide a formula to ascertain the duty content on the export and other usual procedures. These notifications neither create a right nor affect the pre-existing right to avail the rebate of duty. Hence, the said notifications are not hit by the principles of retrospectivity. On the identical issue concerning rebate of duty paid under section 3A on processed textile fabrics, the decision of the Board, based on the opinion of the Ministry of Law, Justice & Company Affairs, has already been communicated by Circular No. 462/28/99 - CX dated 21.6.99.


3. In view of the above legal position, the Board has decided that the exporters of the said goods will be entitled for rebate under rule 12 of the Central Excise Rules in respect of said goods cleared from the factory of independent manufacturers and exported during 1.8.97 (inclusive to 23.8.98 and the formula for computation of rebate and other procedures prescribed in the said notifications should be applied while granting such rebates.

4. The Board further desires that the Trade/exporters and the field formations may be informed quickly about this decision. The exporters will be allowed to submit additional calculation sheet based on the formula prescribed in the said notifications even in cases where they filed rebate claims earlier and are lying pending with the Department. All rebate claims pertaining to the period in question should be taken on priority basis."

The department has not stated in the grounds of revision application as why department does not want to follow the said circular. In view of said categorical clarification of CBEC in the matter Commissioner appeal has rightly allowed the rebate claim in terms of Notification No. 31/98-CE (NT) dt. 24-08-98 for the period 01-08-97 to 23-08-98.

11. In view of above position, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

12. So, Ordered.




(D.P. Singh)

Joint Secretary to the Govt. of India

The Commissioner of Central Excise,  
Commissionerate, Chennai-I,  
Mahatma Gandhi Road, Nungambakkam,  
Chennai-600034.

ATTESTED



(भागतवल शर्मा/Bhagwat Sharma)  
सहायक आयुक्त (आयुक्त, चण्णै-1)  
C. E. (Asstt. Commr. (Chennai-1))  
वित्त मंत्रालय (आयुक्त विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत शास्त्र/Govt. of India  
नई दिल्ली / New Delhi

Order No. 150 /14-Cx dated 15-4-2014

Copy to:

1. The Commissioner of Central Excise (Appeals), C.R.Building, Kannavarithota, Guntur-522004.
2. The Deputy Commissioner of Central Excise, D-Division, Commissionerate, Chennai-I.
3. M/s. Goyal Metal Industries (P) Ltd., III B-No.9, MC Nichols Road, Cheput, Chennai-600031.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

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(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)