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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
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Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor; World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No.198/20/2014-RA / 2195

Date of Issue: 22.03.2021

ORDER NO. 151 /2021-CX (WZ)/ASRA/MUMBAI DATED 17.03.2021 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise & Customs, Indore (M.P.)

Respondent : M/s Prestige Feed Mills Ltd. Dewas (M.P.)

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. IND/CES/000/APP/125/13 dated 27.09.2013 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.

ORDER

This Revision Application is filed by the Commissioner Customs, Central Excise Service Tax, Indore (Madhya Pradesh) (hereinafter referred to as "the Applicant") against the Order-in-Appeal No IND/CES/000/APP/125/13 dated 27.09.2013 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore.

2. The brief facts of the case are that M/s Prestige Feed Mills Ltd., 49-C, Industrial Area No. 2, AB Road, Dewas (Madhya Pradesh). (hereinafter as "the Respondent") holder of Central Excise Registration No. AABCPO412HXM001 are engaged in the manufacture and export of the finished goods namely- Indian Soyabean Meal (De-oiled Cake). The respondent had filed rebate claim initially on 07.05.2012 for Rs.7,52,025/- (Rupees Seven Lakhs Fifty Two Thousand and Twenty Five only) in respect of duty paid on input i.e Hexane used in the manufacture of exported goods viz. Indian Soyabean Meal (De-oiled Cake) under Rule 18 of Central Excise Rules, 2002, read with Notification No. 21/2004-C.E. dated 06.09.2004. The Respondent vide letter dated 23.11.2012 addressed to the rebate sanctioning authority, i.e. Assistant Commissioner, Central Excise and Customs, Ujjain Division informed as under:-

*"In respect of claim of Rs 7,52,026/ please find enclosed the following":-*

- 1. Copy of Shipping Bill No.6511596 dt 2.12.2011.*
- 2. Original Invoice of Hexane-HX/ Local/ 39 dt.1.7.11 (Sky Exim Pvt. Ltd, Ujjain)*

*Further, we withdraw our claim in respect of followings-*

- 1. ARE-2 against S/ B No.6401023 dt 25.11.2011.*
- 2. During the scrutiny of the claim it was noticed that an amount of Rs.15809/ -was claimed by us in excess due to application of higher rate of duty as per unit of Hexane. We hereby withdraw our claim to the extent of Rs. 15809/ "*

3. The rebate sanctioning authority, i.e. Assistant Commissioner, Central Excise and Customs, Ujjain vide Order in Original No. R-376/2012-13/ Rebate/AC dated 08.01.2013 passed the following Order :-

*"I hereby sanction rebate claim of 7,26,468/- (Seven Lakh Twenty Six Thousand Four Hundred Sixty Eight only) and Order to be paid by means of an account payee*

*cheque to M/s Prestige Feed Mills Ltd. Dewas in terms of Rule 18 of Central Excise Rules, 2002 read with Section 11-B of the Central Excise Act, 1944. I reject the claim of Rs. 25,557/-(9748 + 15809) since withdrawn as discussed in Para 3 and 4 above".*

4. Despite of the fact that the impugned Order-in-Original had been passed in favour of the Respondent, the Respondent preferred an appeal before Appellate Authority contending that their rebate claim related to the inputs 'Hexane' was allowed vide the said Order in Original but the rebate claim related to inputs 'P.P. Bags' was not considered vide the said Order in Original and that even no finding has been given for this aspect in the Order in Original. The Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore Order vide Order-in-Appeal No. IND/ CEX/000/APP/ 125/13 dated 27.09.2013, held that

*"5.1 From the records of the case, I find that the adjudicating authority had summarily rejected the rebate of Central Excise duty paid on the inputs i.e. P.P. Bags which was used by the appellant in the export of their manufactured goods during the period from November, 2011 to December, 2011.*

*5.2 There is no SCN or Order to show grounds on which the rebate on P. P. Bags has been denied to the appellant. This is in total violation of the Principle of Natural Justice. On the face of it, it appears that P.P Bags are eligible for rebate. The adjudicating authority should have considered this aspect and if there was any discrepancy or ground to deny such rebate, the same should have been recorded in the impugned Order which the jurisdictional rebate sanctioning/ adjudicating authority has failed to do. It is also confirmed that rebate on the P.P Bags is being given on their subsequent claims.*

*5.3 The case is therefore remanded back to the divisional Assistant Commissioner / adjudicating authority to re-examine the case and take appropriate decision after following due process of natural justice."*

5. Aggrieved with the said Order-in-Appeal, the Commissioner, Customs, Central Excise and Service Tax, Indore (M.P.) has filed the present Revision application on the following grounds :-

- (i) The Appellate Authority has remanded the matter back to the Adjudication Authority for fresh adjudication in spite of the fact that Commissioner (Appeals) does not have power of remand.
- (ii) Section 35A(3) of the Central Excise Act, 1944 / Section 128A(3) of the Customs Act, 1962 as it existed before 11.05.2001 provided that *"Commissioner (Appeals) shall, after making such further enquiry as may be necessary pass such order, as he thinks just and proper confirming modifying or annulling decision or order appealed **against or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary.**"* An amendment was brought out in the aforesaid sections vide Finance Act, 2001 w.e.f. 11.05.2001 deleting the phrase as mentioned in bold above with an intention to withdraw the powers to Commissioner (Appeals) to remand the cases for fresh adjudication to the original adjudication authorities. After the amendment in 2001, the said Sections read as follows: -

*"The Commissioner(Appeals) shall, after making such further enquiry as may be necessary, pass such order, as he thinks just and proper. confirming, modifying or annulling the decision or order appealed against."*

The Appellate Authority has erred by remanding the matter back to Adjudicating Authority in spite of amendment in Section 35A(3) in 2001.

- (iii) The Appellate Authority failed to appreciate the fact that Hon'ble High Court of Punjab & Haryana, in case of CCE Amritsar Vs M/ s Enkay (India) Rubber Co. Pvt. Ltd [2008(224)ELT 393] and CCE, Jalandhar Vs B.C. Kataria [2008 (221) ELT 508) had held that the Commissioner (Appeals) have been divested of the powers to remand the cases back to Adjudicating Authority after deletion of that power from Section 35A(3) of Central Excise Act vide amendment made in 2001.
- (iv) Further, Hon'ble Supreme Court in its judgment dated 1.3.2007 in Civil Appeal No 6988/2005 in the case of MIL India Ltd [2007(210) ELT 188(SC)] has observed that *"in fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that*

*clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (A) to remand matters back to the adjudicating authority for fresh consideration."*

- (v) This view of Hon'ble Supreme Court has been affirmed by the Hon'ble High Court of Punjab & Haryana on their judgment passed in case of CCE Jalandhar Vs Hawkins Cookers Ltd. In the course of judicial discipline the Appellate Authority was bound to follow the decisions discussed supra.
- (vi) The Appellate Authority failed to appreciate the fact that Respondent claimed only amount of Rs. 7,52,025/- in their 'R' Form before the rebate sanctioning authority and thereafter withdraw claim of Rs. 25,557/-. Thus rebate sanctioning authority has rightly sanctioned amount of Rs.7,26,468/- (Rs.7,52,025/- - Rs. 25,557/-) and rejected amount of Rs.25,557/- as same has been withdrawn by the Respondent.
- (vii) The Appellate authority had observed that there has been violation of Natural justice as the adjudicating authority did not issue any show cause notice nor granted any personal hearing before rejecting the rebate claim of the Respondent on PP Bags. But the Appellate Authority had failed to verify the facts from rebate sanctioning authority. Upon factual verification, it was found that the Respondent did not claim the rebate of duty on PP bags, in their application/ claim of rebate filed before the proper authority. Question of violation of natural justice and issuance of show cause for rejecting the rebate claim on PP bags would have arisen only when the Respondent had claimed the rebate of duty on PP bags. In the instant case, from Form 'R' submitted by the Respondent and letter of withdrawal before the adjudicating authority, it is clear that Respondent have claimed rebate of duty only for amount of Rs. 7,26,468/- (Rs. 752025/ - Rs. 25557/ ) which had been sanctioned to the Respondent. Thus Order-in-Appeal is factually incorrect and bad in law
- (viii) In view of the above factual & legal position, Order-in-Appeal No. IND/CEX/000/APP/125/2013 dated 27.09.2013 passed by the

Commissioner (Appeals), Central Excise, Indore does not appear to be legal and proper and the same is liable to be set aside.

6. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date Cestat filed	Cestat order date	Date RA/COD filed	No. of days delay
1	195/20/13-RA	27.9.13	11.10.13	10.1.14	3.2.2014	4.3.14	90+51

Applicant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD') on the following grounds:-

- (i) Date of receipt of Order-in-Appeal passed by the Commissioner (Appeals) was 11.10.2013 and the last date of filing of Appeal before Hon'ble Tribunal was 10.01.2014.
- (ii) They were of belief that the matter pertains to the power of remand by the Commissioner (Appeals), appeal would lie before the CESTAT, and therefore, the appeal before the CESTAT was filed well within time. Said Appeal was returned by the Tribunal stating that as per first provision of the Section 35B of the Central Excise Act, 1944 CESTAT does not have jurisdiction over the cases of rebate and same was received in their office on 03.02.2014.
- (iii) As per section 35EE of the Central Excise Act, 1944 in cases of rebate, a Revision Application should be filed before the Central Government and therefore Revision Application was filed on 26.02.2014 along with Misc. Application for Condonation of delay.
- (iv) They prayed that the delay in filing of application may kindly be condoned and same may please be accepted as per proviso to the subsection (2) of the Section 35EE of the Central Excise Act, 1944.

7. A Personal Hearing in this matter was held on 25.02.2020. Shri Stephan Samuel, Superintendent, CGST & Central Excise, Indore appeared on behalf of the Applicant Department and none appeared on behalf of the Respondent. The

Applicant reiterated the grounds of Revision Application. He also submitted that the Commissioner (Appeals) has no power to remand the case. The Respondent's letter dated 23.11.2012 was discussed in the findings, in which they have withdrawn the claim. Since there was a change in the Revisionary Authority, a fresh personal hearing dates were fixed for 03.12.2020, 08.12.2020, 11.12.2020 and 28.01.2021. The Respondent vide email dated 27.01.2021 that due to some unavoidable reasons, their legal advisor is out of station for a month, so requested to extend the date of personal hearing for a month. Accordingly, a final hearing was fixed on 25.02.2021, however none appeared for the hearing.

8. Government has carefully gone through the relevant case records & written submissions and the impugned Order-in-Original and Order-in-Appeal.

9. Government first proceeds to discuss the issue of delay in filing these three revision applications. It is clear that Applicants have filed the revision applications after 3 months + 51 days when the time period spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944 the revision application can be filed within 3 months of communication of Order-in-Appeal and delay up to another 3 months can be condoned provided there are justified reasons for such delay. In view of judicial precedence that period consumed for pursuing appeal bonafidely before wrong forum is to be excluded in terms of Section 14 of Limitation Act, 1963 for the purpose of reckoning time limit of filing revision application under Section 35EE of Central Excise Act, 1944. Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

10. On perusal of the records, Government observes that the Respondent vide their Form-R dated 07.05.2012 had filed a refund claim for Rs.7,52,025/- addressed to the said Assistant Commissioner Central Excise, Ujjain, Further, the Respondent vide their letter dated 23.11.2012 addressed to the Assistant Commissioner Central Excise & Customs, Ujjain withdraw their claim in respect of followings :

*"1. ARE-2 against S/ B No.6401023 dt 25.11.2011.*

*2. During the scrutiny of the claim it was noticed that an amount of Rs.15809/- was claimed by us in excess due to application of higher rate of duty as per unit of Hexane. We hereby withdraw our claim to the extent of Rs. 15809/ "*

From the said Order in Original dated 08.01.2013, it is also observed that the said Order does not speak about any other rebate claim purportedly filed by the Respondent towards PP Bags used for packing of exported goods. Government finds that the said Assistant Commissioner vide aforesaid Order-in-Original dated 08.01.2013 has rightly considered the rebate claim of Rs.7,52,025/- and sanctioned rebate of Rs.7,26,468/- after deducting amount of Rs. 25,557/- (Rs.9,748/- + Rs.15809/-) since withdrawn as per Respondent's letter 23.11.2012. And there is nothing on record from the Respondent's side to suggest that they filed a combined rebate claim for inputs used in the exported products namely Hexane and P.P. Bags in same Form-R.

11. Hence, Government finds that the findings of the Commissioner(Appeals) that the adjudicating authority had summarily rejected the rebate of Central Excise duty paid on the inputs i.e. P.P. Bags which was used by the Respondent in the export of their manufactured goods during the period from November, 2011 to December, 2011, that there was no SCN or Order to show grounds on which the rebate on P. P. Bags had been denied was in total violation of the Principle of Natural Justice is without any basis.

12. Government finds that the Order-in-Original dated 08.01.2013 passed by the Assistant Commissioner, Ujjain Division is only with reference to Rebate/ Refund claim of Rs.7,52,025/- filed by the Respondent. The Commissioner (Appeals) in passing the impugned order, has travelled beyond the scope of the Order-in-Original dated 08.01.2013 as there is no mention regarding the rejection of Rebate/Refund claim of Rs.6,78.857/- in respect of P.P. Bags. in the said Order-in-Original. Therefore, Commissioner (Appeals) in his impugned order had made out altogether a new case which was never the subject matter before the Original Adjudicating Authority.

13. Moreover, the Respondent in the present case has not brought before this authority any other rebate claim of Central Excise duty paid on the inputs i.e. P.P.



Bags which was used by the Respondent in the export of their manufactured goods during the period from November, 2011 to December, 2011 or any other correspondence from Assistant Commissioner, Ujjain Division not considering or rejecting the same. Being so, Government holds that no fault can be found with the Order in Original No. 376/2012-13/REBATE/AC dated 08.01.2013 passed by the Assistant Commissioner, Ujjain Division.

14. In view of above discussion. Government sets aside Order-in-Appeal No IND/CES/000/APP/125/13 dated 27.09.2013 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore, and restores the Order-in-Original No. 376/ 2012-13/Rebate/AC dated 08.01.2013 passed by Assistant Commissioner, Central Excise & Customs, Ujjain Division.

15. The Revision Application is allowed on the above terms.

*Shrawan*  
*17/03/21*  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 151/2021-CX (WZ)/ASRA/Mumbai Dated 17.03.21

To,  
The Commissioner of Central Goods & Service Tax,  
Indore,  
Manik Bagh Palace, Post Box No. 10,  
Indore-452 001(M.P.)

Copy to:

1. M/s Prestige Feed Mills Ltd., 49-C, Industrial Area No. 2, AB Road, Dewas, Indore (Madhya Pradesh) – 455 001.
2. Commissioner(Appeals), Indore, Manik Bagh Palace, Post Box No. 10, Indore 452 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.