



**REGISTERED
SPEED POST**

F.No. 195/1159/11-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. 23/4/14

ORDER NO. 158/14-Cx DATED 22.04.2014 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 Act, 1944 against the Orders-in-Appeal No. US/210/RGD/2011 dated 18.08.2011 passed by Commissioner of Central Excise (Appeals), Mumbai Zone-II

Applicant : M/s Positive Packaging Industries Ltd.

Respondent : Commissioner of Central Excise , Customs & Service Tax, Raigarh, 4th Floor, Kendriya Utpad Shulk Bhavan, Plot No. 1, Sector No. 17, Khandeshwar New Panvel(W) Maharastra – 410 206.

ORDER

This revision application is filed by applicant M/s Positive Packaging Industries Ltd. Khopoli against the orders-in-appeal No. US/210/RGD/2011 dated 18.08.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II, Mumbai.

2. Brief facts of the case are that in this case original authority sanctioned the rebate claim of Rs. 57,684/-. Department filed appeal before Commissioner (Appeals) on the ground that rebate claim the tune of Rs. 3,624/- was wrongly sanctioned. It was contended in the appeal that FOB value shown in the Shipping Bill is the commercial value. The commercial invoice value is the value at which goods are sold. As per Section 4 of Central Excise Act, 1944, The transaction value, is the value at which goods are sold. The ARE-1 value is higher than the FOB value. Therefore, the amount paid on such part of ARE-1 value over and above the FOB value is not the duty of Central Excise but is to be treated as "excess payment". The rebate in terms of Rule 18 of the Central Excise Rules, 2002, is the rebate of Central Excise Duty paid on the exported goods. Hence, the sanction of the rebate of such amount is in violation of Rule 18 of the Central Excise Rules, 2002. Commissioner (Appeals) allowed the department appeal and thereby disallowed rebate claim of Rs. 3,624/-.

3. 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 various grounds.

4. Personal hearing scheduled in this case on 08.08.2013 and 12.03.2014 was attended by Shri P.K. Shetty, Advocate, and Shri P. Gopalam, General Manager(Indirect Taxation) on behalf of the Applicants, who re-iterated grounds of Revision Application. Shri S.K. Gupta, Inspector, Central Excise, appeared on 08.08.2013 on behalf of Department, Respondent.

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

6. On perusal of records, Government observes that in the instant case part rebate claim of Rs. 3,624/- was disallowed vide impugned Order-in-Appeal. Now applicant has contested the said order and pleaded to allow the said claim. In this regard, Government notes that as per section 35EE of Central Excise Act, 1944 Central Government on the application of any person aggrieved by any order passed under section 35 A where order is of the nature referred to in the first proviso to section 35B(1) annul or modify such order provided that Central Government in its discretion refuse to admit an application in respect of an order where amount of duty or fine or penalty determined by such order does not exceed five thousand rupees. In this case disputed rebate claim amount is only Rs. 3,624/- and therefore in view of provisions of first proviso to section 35EE(1), Government is not inclined to accept said revision application and rejects the same.

7. In view of above position, the revision application stands rejected in above terms.

8. So, ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Positive Packaging Industries Ltd.,
Vill-Ransai, KM-16, Khopoli-Pen Road,
Khopoli – 410203.

(Attested)

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

Order No. 158 /2014-Cx dated 22.04.2014.

Copy to:

1. Commissioner of Central Excise, Raigad Commissionerate, Plot No.1, Kendriya Utpad Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai – 400614.
2. The Commissioner of Central Excise (Appeals), 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.
3. The Assistant Commissioner of Central Excise, Khopoli Division, Raigad Commissionerate, 4th Floor, TrifedTowers, Khandeshwar, New Panvel, Maharashtra 410 206.
4. Shri P.K. Shetty, Advocate, Excel Consultancy Services, A/204, Jalaram Park , Mulund Link Road Junction, Bhandup (W), Mumbai 400078.
5. ✓ PS to JS(RA)
6. Guard File.
7. Spare Copy



(Bhagwat P. Sharma)
OSD (RA)