

REGISTERED  
SPEED POST



**F.No. 195/76/2013-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
6 FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...10.07.15...

**Order No. 16/2015-CX dated 09.07.2015** 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. BC/274/M-  
III/2012-2013 dated 25.09.2012 passed by Commissioner of  
Central Excise (Appeals), Mumbai-III.

Applicant : M/s. NR Hytech Engineers Private Limited.

Respondent : Commissioner of Central Excise, Thane (West).

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**ORDER**

This revision application is filed by the applicant Commissioner of Central Excise, Mumbai-III against Order-in-Appeal No. BC/274/M-III/2012-2013 dated 25.09.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III with respect to Order-in-Original No. 5/2011-12 dated 15.05.2012 passed by the Deputy Commissioner of Central Excise, Wagle-I Division, Mumbai-III.

2. Brief facts of the case are that M/s. NR Hytech Engineers (P) Ltd., have filed rebate claim under Rule 18 of Central Excise Rules, 2002. The Adjudicating Authority, vide the impugned Order-in-Original, rejected the rebate claim for the reason that they have availed drawback, and as such, allowing rebate will amount to double benefit.

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 Orders-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 Commissioner (Appeals) committed a grave error in holding that the applicants claimed the drawback of not only the portion of the customs duty component but also drawback of portion of Central Excise and also Service Tax component. It is submitted that it was on record that in the Shipping Bill pertaining to ARE-1 No. 042/11-12, though it was mentioned that drawback is being claimed under Column "A" of the schedule, factually the rates of drawback applied by the Applicants for claiming the same were those prescribed under Column "B" of the schedule.

4.2 The Commissioner (Appeals) ought to have appreciated the fact that Applicants were entitled to claim drawback at the rates prescribed under Column "B" and in reality the Applicants had claimed the correct drawback based on the said rates prescribed in said Column "B".



4.3 The applicant has relied upon following case laws in favor of their contention:-

- (a) In re: Mars International reported in 2012 (286) ELT 146 (G.O.I).
- (b) In re: Aarti Industries Ltd. reported in 2102 (285)ELT 461 (G.O.I).
- (c) In re: Benny Impex Pvt. Ltd. reported in 2003 (154) ELT 300 (G.O.I).

4.4 The Commissioner (Appeals) committed a grave error of facts in holding that the applicants have claimed drawback at more percentage than the percentage of Customs Duty portion of drawback. It is submitted that the Applicants had correctly applied the rates of drawback specified in the Column "B" of the schedule. Column "B" prescribes the rates of drawback in cases where the exporter has claimed input duty credit under the Cenvat Credit Rules. These rates, therefore, are based only on the Customs Duty element on inputs since the Excise Duty element and Service Tax element is already covered by Cenvat Credit claimed by the exporter. The Commissioner (Appeals) failed to appreciate this factual position and rejected the applicant's rebate claim on the basis of erroneous ground that the applicants have claimed drawback at more percentage than the percentage of Customs Duty portion of drawback.

4.5 The Commissioner (Appeals) has not given any justification backed by actual mathematical calculations for holding that the applicants have claimed drawback at a percentage more than the percentage of Customs Duty portion. It is submitted that the applicants had made a specific averment in their appeal that they have applied the drawback rates of Column "B" of the Schedule. It was also specifically averred that column "B" of the schedule prescribed the drawback rates only by considering Customs Duty element on the inputs and therefore the applicants have obtained drawback only of the Customs Duty element. In the face of the said averment by the applicant, it was incumbent upon the Commissioner (Appeals) to provide the mathematical calculations which, according to her, proved that the applicants have obtained more percentage of drawback and



therefore, they have availed drawback of Central Excise Duty portion and Service Tax portion also. It is submitted that the above finding recorded by the Commissioner (Appeals) is merely a statement not backed by any solid proof or calculations to show that the applicants have availed drawback of Central Excise Duty portion and Service Tax portion. The applicants, therefore, submit that the said finding of the Commissioner (Appeals) is unsubstantiated and devoid of any merit.

4.6. It is further submitted that whether the applicants have claimed the drawback of only the Customs Duty portion or not, is a question of fact to be verified by the sanctioning authority of the rebate claim. In that view of the matter, it is submitted that the impugned order be set aside and the case remanded to the original Adjudicating Authority for de-novo adjudication after verifying the facts about the availment of Customs Duty drawback.

4.7. The applicants also submit that the Order-in-Original dated 15.05.2012 (supra) was issued by the Deputy Commissioner in gross violation of the principles of natural justice in as much as no opportunity of personal hearing was granted to the notice (Applicants in the present Revision Application). It was specifically urged before the Commissioner (Appeals) that the Order-in-Original has been issued ex-parte and the same deserves to be set aside on that ground also. However, the Commissioner (Appeals) has chosen to ignore this important point of law raised by the applicants and the impugned order is totally silent on this aspect. The impugned order is therefore unsustainable in law on this ground also and deserves to be set aside. The applicants pray that the same be set aside.

5. Personal hearing in this case held on 30.03.2015 was attended by Shweta Yadav on behalf of the respondent Department and stated that the Order-in-Appeal is in Order and may be upheld. The applicant sought adjournment and personal hearing held on 16.04.2015 was attended by Shri Suraj Kaushik Consultant 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. Government observes that the applicant's rebate claims was rejected on the ground that the applicant availed drawback and as such, allowing rebate claim will amount to double benefit. Commissioner (Appeals) upheld impugned Order-in-Original on the ground that the applicant has claimed higher percentage of drawback than the percentage of customs portion of drawback. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

8. On perusal of the records, Government notes that department has contended that the applicant has availed higher rate of drawback under Column "A" of the drawback schedule and as such, allowing rebate would amount to double benefit. In response, the applicant contended that they have mistakenly mentioned in their relevant Shipping Bill and ARE-1 that they are claiming drawback as per rate prescribed in Column "A" of drawback schedule, whereas, they actually applied for rate and caps which are mentioned in Column "B" of the said Drawback Schedule. There is no dispute on the fact that rebate under Rule 18 of the Central Excise Rules, 2002 is not admissible when drawback under Column "A" of the Drawback Schedule has been availed. The only point in dispute is whether the applicant availed drawback under Column "A" or "B" of Drawback Schedule on shipping Bill No. 5919078 dated 20.10.2011.

8.1 Government notes that the adjudication proceedings were initiated by issuance of Show Cause Notice dated 16.04.2012 to the applicant. In reply to the said Show Cause Notice, the applicant had filed written submission dated 14.05.2012, wherein, in respect of ARE-1 No. 42/2011-12, which is the subject matter of this case, they stated that they have mistakenly mentioned in their relevant shipping Bill that they are claiming drawback rate mentioned under Column "A" whereas the drawback rate mentioned at Column "B" was applied by them. Government observes that the lower authorities have categorically observed that on verification of Shipping Bill No. 5919078 dated 20.10.2011, it has been observed that the applicant have availed higher rate of drawback as compared to only customs portion. The applicant's contention against this observation that they have availed only customs portion of drawback, has not been substantiated by



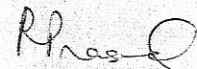
means of any other valid documentary evidences. Therefore the contention of the applicant that mentioning of Column "A" of the Drawback Schedule was a mistake is not sustainable. As such, categorical findings of lower authorities cannot be faulted with in absence of any substantial documentary evidences against this.

9. As regards Applicant's contention that Order-in-Original has been passed ex parte and needs to be set aside, Government observes that it is an undisputed fact on record that opportunities for personal hearing on 20.04.2011 and/or 23.04.2011 and/or 24.04.2011 were given. Applicant vide letter 21.04.2012 requested for extension. Next date for personal hearing was given on 08.05.2012 but the applicant did not appear again and vide letter dated 14.05.2012 made a written submission only seeking rebate. Therefore, Government finds that the applicant was given adequate opportunities for personal hearing. The principles of natural justice have been complied with.

10. In view of above circumstances, Government holds that the instant rebate claim of duty paid on exported goods is not admissible under Rule 18 of Central Excise Rule 2002 read Notification No. 19/2004-CE(NT) dated 06.09.2004 when exporter has failed to prove that they have availed duty drawback of Custom portion only in respect of exported goods. As such, Government finds no legal infirmity in the impugned Order-in-Appeal and hence, upholds the same.

11. The Revision Application is thus rejected being devoid of merit.

12. So, ordered.



(RIMJHIM PRASAD)

Joint Secretary to the Government of India

M/s. NR Hytech Engineers Private Limited,  
Plot No. A-319, Road No, 22,  
Wagale Industries Estate,  
Thane (West),  
Maharashtra - 4000604.

Attested

(महेश्वर शर्मा / Maheshwar Sharma)  
सहायक आयुक्त / Assistant Commissioner  
C.B.E.C.-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
सरकार / Govt of India  
नई दिल्ली / New Delhi




**GOI Order No. 16/2015-CX dated 09.07.2015**

Copy to:

1. The Commissioner of Central Excise Mumbai -III, Vardaan Trade Centre, M.I.D.C. Wagle Industrial Estate, Thane(West)-400604.
2. The Commissioner (Appeals) Central Excise Mumbai-III, 5<sup>th</sup> Floor, C.G.O. Complex, CBD, Belapur, Navi Mumbai-400614.
3. The Deputy Commissioner of Central Excise, Wagle-I Division, Mumbai-III, Central Excise Building, Road No. 22, Wagale Industries Estate, Thane (West) -4000604.
4. Shri Suraj Kaushik, Advocate, M/s. Jay Pee & Co, Kothi No. 22487, Sector-8, Faridabad-121006.
5. Guard File.
6. PA to JS (RA).
7. Spare Copy.

ATTESTED

  
(B.P. Sharma)

OSD (Revision Application)

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