

F.No.195/854/11-RA

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F.No.195/854/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue..... 3/12/12

Order No. 1649 / 2012-CX dated 05 .12.2012 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 order-in-appeal No. PKS/190/BEL/2010 dated 23.07.10 passed by Commissioner of Central Excise (Appeals), Mumbai-III.

Applicant : M/s Pearson Drum & Barrels Pvt. Ltd., Talaja Distt., Raigarh, Maharashtra

Respondent : Commissioner of Central Excise, Belapur Commissionerate.

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ORDER

This revision application is filed by the applicant M/s Pearson Drum & Barrels Pvt. Ltd., Talaja Distt. Raigarh Maharashtra against order-in-appeal No. PKS/190/BEL/2010 dated 23.07.10 passed by Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II Belapur, Navi Mumbai with respect to order-in-original No. R-381/09-10 dated 23.04.09 passed by Assistant Commissioner Central Excise, Talaja Division, Belapur Commissionerate.

2. Briefly stated facts of the case are that the applicants have filed rebate claim of duty paid on excisable goods used in the manufacture of goods exported under three ARE-2 bearing number 1 dated 9.09.08, 2 dated 29.09.08 and 4 dated 24.10.08 under provisions of Notification No. 21/2004-CE(NT) dated 6.09.04 as amended, read with Rule 18 of Central Excise Rules, 2002 for an amount of Rs.4,06,306/-. After due verification, the Assistant Commissioner granted rebate to the extent of Rs.4,00,944/-.

3. Being aggrieved by the said order-in-original, the department filed appeal before Commissioner of Central Excise (Appeals) on the following grounds:-

3.1 Under paragraph 5 of Notification No. 21/2004-CE(NT) dated 6.09.,04, it is stipulated that the goods should be exported on the application in form ARE-2 specified in the Notification.

3.2 In ARE-2, the exporters has to give declaration that he has not availed facility of Cenvat Credit under Cenvat Credit Rules, 2004 (CCR, 2004);

3.3 As per paragraph 1.5 of part V of Chapter 8 of the CBEC's Central Excise Manual, the benefit of rebate cannot be claimed where the facility of input stage credit is availed under CCR, 2004 in case of exports;

3.4 In the impugned order, the sanctioning authority has nowhere mentioned that the facility of input stage credit of duty for which rebate is claimed, was not availed by the respondents;

3.5 On verification, it was found that the respondents have availed cenvat credit of duty paid on raw material, GP coils, in respect of goods exported under all three ARE-2; and

3.6 The respondents have availed double benefit, i.e. credit of duty paid on raw material under CCR, 2004 and also rebate under Rule 18 of Central Excise Rules, 2000.

After considering the submissions of both parties, Commissioner allowed the appeal of department by setting aside the impugned order-in-original dated 23.04.09.

4. Being aggrieved by the impugned order-in-appeal, the applicant have filed this revision application under Section 35EE of the Central Excise Act, 1944 before Central Government on the following grounds :

4.1 That the adjudicating authority after due consideration of all the facts and the eligibility of rebate had allowed the said rebate claim of Rs.4,00,944/- against the claim of Rs.4,06,306/-.

4.2 That since the applicants were not a regular exporter of goods and for the first time made a consignment for export, hence by mistake the cenvat credit availed on such inputs which were gone into the manufacture of final product were not reversed at the time of clearance of the goods for export against the claim for rebate of duty.

4.3 That applicants realized their mistake, when it was pointed out to them only by way of filing an appeal by the department against the said 'order-in-original' sanctioning rebate claim by the jurisdictional Assistant Commissioner, Central Excise, Talaja Division, they have reversed the credit immediately on 22<sup>nd</sup> October, 2009 vide Debit Entry No. 16/294 dated 21.10.09 in their RG23A Part-II

for Rs.1,39,003/- and Debit Entry No. 16/297 dated 21.10.09 in their RG23A Part-II for Rs.96,481/-.

4.4 That in view of the binding decision of the Hon'ble High Court of Allahabad in the case of Hello Minerals Pvt. Ltd. Vs. UOI reported in 2004 (174) ELT 422, wherein, their Lord Ships has observed as :-

*"18. In view of the above decision we are of the opinion that reversal of modvat credit amounts to non-taking of credit on the inputs. Hence the benefit has to be given of the notification granting exemption / rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage."*

4.5 That not only the Allahabad High Court but also the Hon'ble Gujarat High Court in the case of CCE vs. Ashima Dyecot Ltd. – 2008 (232) ELT 580 (Guj) has also adopted a similar view. This judgement of the Gujarat High Court was upheld on an Appeal filed by the Department before the Hon'ble Supreme Court by rejecting the appeal for the department as reported in 2009 (240) ELT A41(SC).

4.6 The Commissioner (Appeals) Central Excise has relied on the decision of the Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. Vs. Collector of Central Excise, Nagpur reported in 1996 (81) ELT 3(SC), wherein the issue involved was eligibility to the exemption under Notification No. 69/86-CE dated 10.02.1986. The said notification stipulated that in availing the exemption no credit of the duty paid on goods should have taken and a circular was issued by the Board, wherein, it has been stipulated that if the credit has been availed on the inputs which were used in the manufacture of dutiable final products and also final products which are exempt from duty and it is not reasonably possible to segregate input utilized in manufacture of the dutiable final products from the final products which are exempt from duty, in such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products.

4.7 That the Commissioner (Appeals) had failed to consider the judgement of Tribunal in the case of Alpha Garments vs. CCE, New Delhi 1996 (86) ELT 600 (Trib.) and various judgements passed by the Government of India viz. Re: Modern Process Printers 2006 (204) ELT 632(GOI), Re:Allanasons Ltd. 1999 (111) ELT 295 (GOI), Re: Ikea Trading (India) Ltd. 2003 (157) ELT 359(GOI), Re: Krishna Filaments Ltd. 2001 (131) ELT 726(GOI), Re: Drawcans (P) Ltd. 1998 (103) ELT 189(GOI) wherein it has been consistently held that procedural lapse cannot come on the way of substantial benefit of rebate claims. The same view has been echoed by the Government of India in its recent decisions viz. re.: Barot Exports 2006 (203) ELT 321(GOI), Re.: Harison Chemicals – 2006 (200) ELT 171(GOI).

5. Personal hearing was scheduled in this case on 28.09.12 Shri Sujit Kumar Singh, General Manager, appeared for personal hearing on behalf of applicant who reiterated grounds of revision application. Nobody attended personal hearing from respondent side.

6. Government has carefully gone through the relevant case records and perused the impugned the impugned orders-in-original and orders-in-appeal.

7. Government notes that applicant exported the goods under claim of rebate of duty paid on materials used in the manufacture of exported goods and filed rebate claim which was sanctioned by original authority. The department on subsequent verification found that the applicant exporter had in fact availed Cenvat Credit of duty on some of the raw-materials so used in violation of applicable provisions of law and procedure. Therefore, an appeal against the above order-in-original was preferred before the Commissioner of Central Excise (Appeals), Mumbai-III. The manufacturer exporter accepted the same as mistake and reversed the said availed Credit of Rs.2,35,845/- out of total granted rebate claim of Rs.4,00,944/-. The Commissioner (Appeals), however, did not

accept the above subsequent correction of mistake by way of reversal of availed credits and by relying on the Apex Court's decisions in M/s Chandrapur Magnet Wires (P) Ltd. and M/s Tullow India Operations Ltd. along with two other case laws, set aside the impugned orders-in-original and allowed the appeal of department, thereby denying total rebate to the claimant Exporter. The applicant Exporter herein is differentiating his case from the above relied upon case laws and is mainly submitting that because of his inadvertent mistake, which stands corrected, he should not be denied his total substantial export benefits which are otherwise admissible to them.

8. Government observes that the applicant exporter has differentiated the factual situation of his case matter from the relied upon caselaws with the plea that he is neither a manufacturer of such final products which are dutiable as well as exempted from duty for which it is not reasonably possible to segregate inputs nor he was disputing any eligibility criteria for an Exemption notification. The applicant herein is relying upon C.C.E. vs. M/s Ashima Dyclot Ltd. case [2008 (232) ELT, 580 (Gujarat H/C)] the Civil Appeal against which by the department stands dismissed by Apex Court. Government also notes that in concluding part of para 7 and 8 of this case, the Hon'ble High Court of Gujarat had observed

*"This issue had come up for consideration before the Allahabad High Court in the case of Hello Minerals Water (P) Ltd. v. Union of India, reported in 2004 (174) E.L.T. 422 (All.), wherein it is held that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence, the benefit has to be given of the notification granting exemption/rate of duty on the final products since the reversal of credit on the input was done at the Tribunal's stage. While arriving at this conclusion, the Allahabad High Court has referred to various judgments under which such reversal was made subsequently and still the benefit was given to the assessee."*

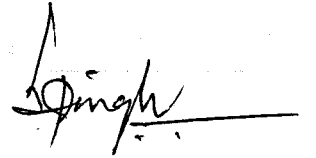
“8. Since, the Tribunal has correctly applied the law..... we are of the view that no question law ..... Appeals dismissed.”

9. In view of above and also taking a note that the applicant Exporter as manufacturer was regularly submitting his Central Excise Returns and never suppressed anything, his pleas of above mistake as having been committed inadvertently needs to be considered and his subsequent reversal of that part of inadmissible Cenvat Credit should be taken as compliance of applicable provisions of Notification No.21/2004-CE (NT) dated 06.09.2004 read with Rule 18 of Central Excise Rules 2004. Government therefore following the principal as adopted in Ms/ Cot Fab Exports [2006(206)ELT-1027(GOI)] is of the considered opinion that such a substantial benefit of rebate claim should not be denied once the cenvat credit stands reversed.

10. Government therefore sets aside the impugned order-in-Appeal and hereby restores the impugned order-in-Original.

11. The Revision Application thus succeeds in terms of above.

12. So ordered.

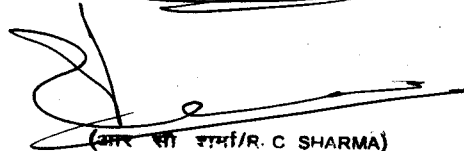


(D P Singh)

Joint Secretary(Revision Application)

M/s Pearson Drums & Barrels Pvt. Ltd.,  
L-103, MIDC, Talaja Industrial Estate,  
Talaja, Tal. Pan-vel, Distt. Raigad  
Maharashtra-410 208

Attested -



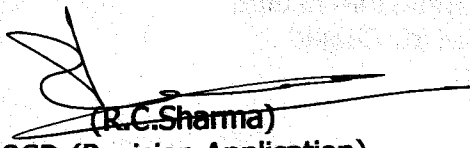
(रमेश चंद्र शर्मा/R. C SHARMA)  
उपायुक्त/Dy Commissioner  
C.B.E.C-OSD to Jt Secy (R.A.)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt of India  
नई दिल्ली/New Delhi

**GOI Order No. 1649 /12-CX dated 05.12.2012**

**Copy to:**

1. Commissioner of Central excise, Belapur, 1<sup>st</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai-400 614.
2. Commissioner of Central Excise & Customs (Central Excise Ahmedabad-II), Customs House, Ashram Road, Navangpura, Ahmedabad – 380 009.
2. Commissioner of Central Excise (Appeals-I), Mumbai-III, Mumbai-Zone-II, 5<sup>th</sup> Floor, CGO Complex, CBD, Belapur, Navi Mumbai-400 614
3. The Assistant Commissioner of Central Excise, Taloja Division, Belapur Commissionerate, 6<sup>th</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400 614.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

**ATTESTED**

  
(R.C.Sharma)  
OSD (Revision Application)