

**REGISTERED  
SPEED POST**



**F.No. 198/108/11-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...5/12/12

ORDER NO. 1650/112-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,  
1944 AGAINST THE ORDER-IN-APPEAL No.  
253/CE/LDH/2010 dated 08-10-2008  
passed by Commissioner of Central Excise,  
(Appeals), Chandigarh-II.**

**APPLICANT : Commissioner of Central Excise,  
Ludhiana.**

**RESPONDENT : M/s. P.C. Udyog,  
Kapurthala.**

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**ORDER**

This revision application is filed by the Commissioner of Central Excise, Ludhiana against the Order-in-Appeal No. 2253/CE/LDH/2010 dated 08-10-2008 passed by Commissioner of Central Excise, (Appeals), Chandigarh-II, in respect of Order-in-Original passed by the Deputy Commissioner, Central Excise Commissionerate, Ludhiana. M/S. P.C. Udyog is the respondent in this case.

2. Brief facts of the case are that the respondent is engaged in the manufacture of IC Diesel Engine and are exporting their finished goods. The applicants exported 144 Nos. of IC Diesel Engine valued at Rs. 27,86,616/- to Dubai on payment of duty and on exportation of the goods, filed rebate claim of Rs. 4,01,830/-. During the perusal of record submitted by the applicant, it has been observed that the name of the consignee on the relevant Excise invoice, Commercial invoice No. PCU/335/2008-09 dt. 16-05-2008 and the Shipping Bill had been mentioned as M/s. A.S. Dubai whereas no name of the consignee had been mentioned on the relevant Bill of Lading. Further, on the relevant Mate Receipt the name of the consignee had been mentioned as M/s. Intercontact, Norway. During investigation another copy of Export invoice No. PCU/335/2008-09 dt. 16-05-2008 was recovered from the respondent on which the name of the consignee had been mentioned as M/s. AI Nijom Trd. Fze, Dubai and the description of the goods exported was mentioned as "Diesel Engine, 10 H.P Self start with Dynamo & Self Comp. Only without Battery (PH-I Type)" whereas on the other documents the description of the goods exported was "IC Diesel Engine 10 HP 1500 RPM, Duly fitted & Assem. With std. Access". Further, a copy of the corresponding Bill of Lading was also recovered from the applicant which bore the name of the consignee as M/s. AI Nijom Trd. Fze, Dubai (UAE). The applicants supplied cost data of Diesel Engine of 10 HP of two types wherein the difference of cost was Rs. 8000/-. Since the respondent had prepared two sets of export documents for the same consignment with some ulterior motive, therefore, a Show Cause Notice dated 09-06-2009 was issued to the respondent asking them to Show cause as to why rebate claim of Rs. 4,01,830/- should not be rejected. The adjudicating authority vide impugned order rejected the rebate claim of the respondent.

3. Being aggrieved by the said Order-in-Original respondent filed appeal before Commissioner (Appeals), who set aside the Order-in-Original and decided the case in favour of respondent party.

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 The Commissioner (Appeals) while allowing the appeal of the party totally ignored the investigations made by the Division preventive which established that there were two different consignee name, first M/s. A.S. Dubai which was mentioned in the documents filed with the rebate claim and the other was M/s. AI Nijom Trd. Fze. Dubai which was found in the documents recovered from the premises of the party during investigations. The Commissioner (Appeals) has wrongly interpreted that the abbreviated name M/s. A.S. Dubai mentioned in the Export invoice derive the full name of the consignee which is M/s. AI Nizam Trd. Fze, Dubai. The abbreviation M/s. A.S. Dubai by no way represent M/s. AI Nizam Trd., Dubai. The adjudicating authority had rightly held that these are not the abbreviations of the same name.

4.2 The Commissioner (Appeals) did not take the cognizance of the fact that the party vide their letter dated 10-03-2009 had himself supplied the cost data provided by a Chartered Engineer for "Diesel Engine 10 HP " & "Diesel Engine 10 HP with self start" and themselves admitted that there is a difference of cost to the extent of Rs. 8000/- between these two types. So the party's present stand that both are same is not tenable as the party had themselves supplied the cost data dated 14-07-2009 from the chartered Engineer against the export made by them. The Commissioner (Appeals) had thus totally ignored the candid admission of the party and set aside the Order-in-Original without giving a thought to the fact that the party's present stand is totally an after thought. If the party had not any ulterior motive they would not have prepared two sets of export documents with different consignee and different description of the goods.

4.3 The Commissioner (Appeals) observation that ARE-1, Shipping Bill and Bill of Lading were not disputed and party had submitted the correct and relevant Mate Receipt and Bank Realization Certificate which was sufficient to prove that the goods were cleared for export and that it is a settled law that rebate cannot be denied/duty cannot be demanded when the goods cleared for notice dated 09-06-2009 was issued to the party asking them as to why rebate claim of Rs. 4,01,830/- should not be rejected. The adjudicating authority vide Order-in-Original No. 853/DC/R/2009 dated 18-12-2009 rejected the rebate claim of the party. The party being aggrieved with the order filed appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide Order-in-Appeal No. 253/CE/LDH/2010 dated 08-10-2010 observed that item cleared by the party is Diesel Engine of 10 HP and other descriptions mentioned in different documents were the feature/accessories of the Diesel Engine.

5. Personal hearing was scheduled in this case on 07-08-2012 & 09-10-2012. Nobody attended the hearing.

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 respondent exported their goods having description as IC diesel engines and filed claim of rebate of duty paid on such goods. Scrutiny of case records of rebate claim revealed that name of consignee in excise invoice, export invoice and Shipping Bill has been mentioned as M/s. A.S. Dubai. During investigation by Divisional Preventive unit, another copy of same export invoice No. PCU/335/2008-09 dt. 16-05-2008 was recovered from the respondent, wherein name of the consignee was mentioned as M/s. AI Nijom Trd. Fze, Dubai. Further, the description found on export documents was "IC Diesel Engine 10 HP 1500 RPM, duly fitted and assembled with sd. Access" while on recovered export invoice, the description was mentioned as "Diesel Engine, 10 HP self start with Dynamo self comp. Only without Battery (PH-I type)". In view said discrepancies, the original authority rejected rebate claim of respondent. Commissioner (Appeals)

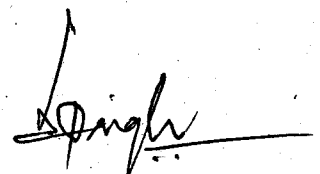
decided the case in favour respondent. Now, the respondent has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that the description quantity/weight of goods exported as mentioned in ARE-I & Excise Invoice and Shipping Bill is tallying with each other. Further, there is cross reference of ARE-1 in Shipping Bill and of Shipping Bill in part B of ARE-1 in the endorsement of customs authorities which certified that goods covered vide impugned ARE-1 were actually export vide impugned Shipping Bill. The name of consignee is also same in all these documents. The exporter has also submitted the BRC for realisation of export sale proceeds. Government finds that these evidences are sufficient enough to prove that goods cleared from factory has been exported under cover of impugned export documents. As such, two substantial conditions of duty paid nature of goods and export of such duty paid goods stands established in this case. Government observes that merely recovery of another copy of export invoice from respondents do not conclusively prove ulterior motive of respondent. The ulterior notice as alleged in impugned Order-in-Original has not been substantiated by proving that duty paid goods cleared for export has not actually been exported. Therefore, Government is in agreement with the findings of the Commissioner (Appeals).

9. In view of above discussion, Government finds no infirmity in order of Commissioner (Appeals) and hence upholds the same.

10. Revision Application is thus rejected being devoid of merit.

11. So, ordered.

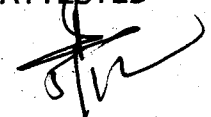


(D.P. Singh)

Joint Secretary to the Govt. of India

Commissioner of Central Excise,  
Central Excise House,  
F-Block, Rishi Nagar,  
Ludhiana-141001.

ATTESTED




Order No/650 /12-Cx dated 05-12-2012

Copy to:

1. The Commissioner of Central Excise (Appeals), Customs and Central Excise, Commissionerate, Chandigarh-I.
2. M/s. P.C. Udyog, G.T. Road, Village Chachoki, Phagwara, Distt- Kapurthala.(PB).
3. PS to JS (RA)
4. Guard File.
5. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)