

REGISTERED
SPEED POST



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre,
Centre - I, Cuffe Parade,
Mumbai-400 005

F.No. 195/536-538/13-RA / 169

Date of Issue 05.06.2018

ORDER NO. ¹⁶⁷⁻¹⁶⁹/2018-CX (WZ) / ASRA / MUMBAI/ DATED 31.5.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Kaizen Switchgear products, Vadodara.

Respondent : Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PJ/522 to 524/VDR-III/2012-13 dated 28.02.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.



ORDER

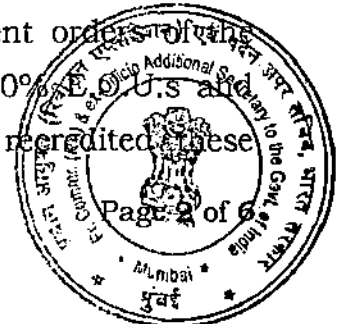
The instant Revision Applications are filed by M/s. Kaizen Switchgear products, Vadodara, (hereinafter referred to as "the applicant") against from the Order-in-Appeal No. PJ/522 to 524/VDR-III/2012-13 dated 28.02.2013 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara.

2. The issue in brief is that the applicant, a 100% EOU had DTA sale & hence the Cenvat Credit got accumulated which they utilized in some of the export consignments & filed the Rebate claims. The said rebate claims were rejected by the Adjudicating authority. Aggrieved by the same the applicant filed appeal before Commissioner (Appeals), Central Excise, Customs and Service Tax, Vadodara. Commissioner (Appeals) vide impugned Order in Appeal dated 28.02.2013 upheld Orders in Original and rejected the appeals filed by the applicant.

3. Being aggrieved with the said Order-in-Appeal, the applicant filed Revision Applications (Revision Applications No.195/536-538/13-RA) against the same under Section 35 EE of the Central Excise Act, 1944 before the Central Government requesting for Re-Credit the amount to their Cenvat Credit Account for utilizing the same for DTA Clearances.

4. A personal hearing in the matter was fixed on 28.05.2018. Shri Samir Chavan, Manager, Excise and Logistics and Shri Dutta Bodke, Authorised Customs House Agent appeared for hearing on behalf of the applicant. The applicant pleaded that they are a 100% EOU and RA in allied cases have disallowed the rebate, therefore, they have taken re-credit. Hence they pleaded that the instant Revision Applications be allowed to be withdrawn.

5. Government observes that the applicant vide submissions dated 28.05.2018 have submitted that since considerable time had passed for the disposal of their above applications, and since the precedent orders of the Hon'ble Revisionary Authority have disallowed rebate to 100% E.O.U.s and have ordered for re-credit of these amounts, they have recredited these



amounts in their Cenvat Credit account. In view of the above facts ,the applicant requested to allow them to withdraw the instant Revision Applications.

6. Government observes that the applicant has already re-credited the amount of duty paid in their Cenvat Credit Account without any authority of law and there is no provision under Central Excise Act, 1944 and Rules allowing suo motu taking of credit or refund without sanction by proper officer. In view of the above, Government discards applicant's request for withdrawal of their Revision Application and proceeds to dispose of the same on merits.

7. Government observes that vide following Orders in Original the rebate claims filed by the applicant were rejected by the rebate sanctioning authority.

Sl. No.	OIO Number	Amount of Rebate rejected (Rs.)	Adjudicating Authority
1.	Reb/Kaizen/577/11-12 dated 31.10.2011	5,04,524/-	Assistant Commissioner, Makarpura Division, Vadodara-II
2.	Reb/Kaizen/578-585 / 11-12 dated 31. 10. 2011	19,59,021/-	---- do ----
3.	Reb/Kaizen/299-336/12-13 dated 02.08.2012	51,05,953/-	---- do ----

8. The applicant, a 100% EOU had exported the finished goods on payment of duty under claim of rebate. Accordingly, they had filed rebate claims on the goods exported from their factory premises under Rule 18 of CER, 2002. The duty had been discharged from their Cenvat Credit account for goods exported under claim for rebate. Hence, SCNs were issued for the rejection of rebate claims and adjudicating authority had rejected all claims as ineligible under Rule 18 of CER,2002 read with Section 11B of CEA, 1944 mainly on the grounds that

- they were required to remove the finished goods from their stock without payment of duty for export having a status of 100% EOU.



- being a 100% EOU by virtue of Notification No.24/2003 dated 31.03.2003 the exported goods do not attract payment of Excise duty,
- only DTA sales are leviable with duties of Excise and Customs,
- the applicant was bound to follow the condition of bond executed by them for the movement of goods in pursuance of rules / law made for 100% EOU, and
- para 2 Board Circular No.799/32/2004-CX dated 23.09.2004 gives manner of utilization of credit availed, only for payment of duty on DTA clearances and for the reasons credit cannot be utilized for other purpose.

9. Being aggrieved by impugned orders as mentioned above, the applicant filed appeals before Commissioner (Appeals) .

10. Commissioner (Appeals) the Order-in-Appeal vide impugned order in Appeal No. PJ/522 to 524/VDR-III/2012-13 dated 28.02.2013 rejected the appeals filed by the applicant holding that

"As per explanation I(A) to Section 5A of Central Excise Act, 1944, the manufacturer of such goods has no option to pay Central Excise Duty since Notification No. 24/2003-C.E., dated 31-3-2003 has been issued under Section 5(A)(1) of Central Excise Act, 1944 granting unconditional exemption from whole of duty in this case. C.B.E.C. has also clarified vide letter F.No. 209/26/2009-CX dated 23-4-2010 that Notification No. 24/2003-C.E., dated 13-3-2003 provides absolute exemption to the goods manufactured by EOU and therefore in terms of Section 5A(1A) of Central Excise Act, 1944, EOUs do not have an option to pay duty and thereafter claim rebate of duty paid. Similar view is taken by Government in its GOI Order Nos. 819-827/2011-0C., dated 24-6-2011 (F. No. 195/282-290/10) and 695/2011-CX., dated 3-6-2011 (F. No. 195/630/2009) [2012 (278) E.L.T. 401 (GO111.1. Order Nos:1234-1236/2011-CX dated 22.09.2011 (F.No.195/390-392/2010-RA) [2012(283)E.L.T.466(G01)] orders are squarely applicable in the instant case".



11. Government notes that the applicant is a 100% EOU. Government finds that 100% EOUs are not required to pay duty as per provisions of Section 5A(1A) of Central Excise Act, 1944 read with Notification No. 24/2003-C.E., dated 31-3-2003. As per explanation 1(A) to Section 5A of Central Excise Act, 1944, the manufacturer of such goods has no option to pay Central Excise Duty since Notification No. 24/2003-C.E. (N.T.), dated 31-3-2003 issued under Section 5A(1A) of Central Excise Act, 1944 granting unconditional exemption from whole of duty in this case. C.B.E. & C. has clarified vide letter F. No. 2009/26/2009-CX., dated 23-4-2010 that in terms of Section 5A(1A) of Central Excise Act, 1944, 100% EOU do not have option to pay duty and thereafter claim rebate of duty paid. Government in this case also relies on the case laws mentioned at para 5 of the impugned Order in Appeal.

12. In view of above discussion, Government finds the rebate claim is liable to be rejected and the impugned Order-in-Appeal cannot be faulted with.

13. Government observes that the applicant in their Revision Application have requested for Re-Credit the amount to their Cenvat Credit Account for utilizing the same for DTA Clearances. However, the applicant without waiting for the outcome of the Revision Application took re-credit of the amounts rejected by original authorities, on their own volition without any authority of law. Government observes that the applicant is entitled to take credit in PLA only based on deposits of cash made by them under TR-6 challans. Similarly, the applicant is entitled to take credit in their RG-23A accounts based on specified duty paying documents. While the applicant is authorized to debit PLA account, RG-23 account on their own for payment of duty, the question of their taking suo motu credit of any alleged sum due from the Department does not arise. The system of taking self-refund does not appear to be not only illegal and without any authority of law but an act of contempt when the revision application is pending before the Government.

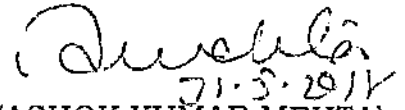
14. Government further observes that taking suo motu refund of duty paid by them is highly objectionable and does not appear to be permitted by the Central Excise Laws and procedures.



15. In the light of the above, Government holds that the suo moto credit taken by the applicant in the instant case needs to be recovered from them. The Government also directs the original adjudicating authority /proper authority to initiate action for the recovery of the unauthorized credit taken suo moto by the applicant along with the applicable interest following the due process of laws and procedures.

16. In view of the above, Government upholds the impugned Order-in-Appeal and the Revision Application is thus rejected in terms of above.

17. So, ordered.



(ASHOK KUMAR MEHTA)


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

ORDER No. ¹⁶⁷⁻¹⁶⁹/2018-CX (WZ) /ASRA/ DATED 31.5.2018.

True Copy Attested

To,

M/s Kaizen Switchgear products,
100% E.O.U.,
Plot No. 1414, GIDC Industrial Estate, Waghodia,
Dist : Vadodara -391760


एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Commissioner, CGST, Vadodara-I, GST Bhavan, Race Course Circle, Vadodara – 390 007.
2. The Commissioner, CGST (Appeals), Central Excise Building, 1st Floor Annex, Race Course Circle, Vadodara – 390 007.
3. The Assistant Commissioner Division VII, CGST Vadodara-I Second Floor, GST Bhavan, Race Course Circle, Vadodara – 390 007.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare Copy.





GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
8th Floor, World Trade Centre,
Centre - I, Cuffe Parade,
Mumbai-400 005

F.No.195/1263/13-RA

Date of Issue 05.06.2018

ORDER NO. 166 /2018-CX (WZ) / ASRA / MUMBAI/ DATED 29.05.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA , PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. United Phosphorus Ltd. Mumbai.

Respondent : Commissioner of Central Excise, Customs and Service Tax, Raigad Commissionerate.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/447/RGD/2012 dated 12.07.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.



ORDER

The instant Revision Application is filed by M/s. United Phosphorus Ltd., Mumbai (hereinafter referred to as "the applicant") against the Order-in-Appeal No. US/447/RGD/2012 dated 12.07.2012 passed by the Commissioner (Appeals-II), Central Excise, Mumbai.

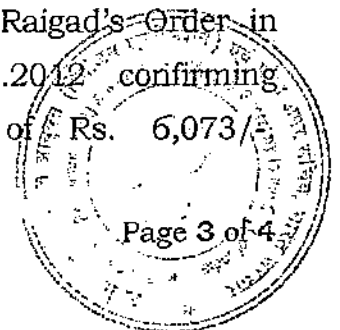
2. The issue in brief is that the applicant a Manufacturer Exporter had filed a Rebate Claim under the provisions of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004 in respect of goods exported by them. The Adjudicating Authority vide Orders in Original No. 1778/10-11 dated 25.01.2011, 1779/10-11 dated 25.01.2011 and 1853/10-11 dated 31.01.2011 sanctioned the said rebate claims.

3. Being aggrieved, the department filed appeal before Commissioner (Appeals) Mumbai-II on the grounds that the value of the goods shown in relevant ARE-1 is higher than the FOB value shown in the Shipping Bills, hence the sanction rebate of such excess payment was in violation of Rule 18 of Central Excise Rules 2002. Commissioner (Appeals) vide Order in Appeal No. US/515-517/RGD/11 dated 30.12.2011 decided the case in favour of department.

4. The applicant were issued three protective demand cum show cause notice all dated 27.06.2011 proposing recovery of erroneously sanctioned rebate of Rs. 6,073/- (Rupees Six Thousand and Seventy Three only) sanctioned vide Order in Original No. 1778/10-11 dated 25.01.2011, Rs.2,41,928/- (Rupees Two Lakh Forty One Thousand Nine Hundred and Twenty Eight only) sanction vide Orders in Original No. 1779/10-11 dated 25.01.2011 and Rs.1,18,024/- (Rupees One Lakh Eighteen Thousand and Twenty Four only) sanctioned vide Order in Original No. 1853/10-11 dated 31.01.2011, alongwith applicable interest under the provisions of Section 11 A(1) of Central Excise Act,1944.



5. Additional Commissioner, Central Excise, Raigad vide Order in Original No. Raigad/ADC/185-187/11-12 dated 14.02.2012 confirmed demand of erroneously sanctioned rebate amount of Rs. Rs. 6,073/- Rs.2,41,928/- and Rs.1,18,024/-with interest.
7. Being aggrieved by the aforesaid Order-in-Original, the applicant filed appeal before Commissioner of Central Excise (Appeals-II) Mumbai who vide Order in Appeal No. US/447/RGD/2012 dated 12.07.2012 upheld the Order in Original No. Raigad/ADC/185-187/11-12 dated 14.02.2012 and rejected applicant's appeal.
8. Being aggrieved with the impugned Order-in-Appeal, the applicant filed the present Revision Application (bearing No. 195/1263/13-RA) against Order in Appeal No US/447/RGD/2012 dated 12.07.2012 under Section 35 EE of the Central Excise Act, 1944 before the Central Government on various Grounds mentioned therein.
9. A personal hearing in the matter was fixed on 22.05.2018. Shri Ajit Pitale, Dy. General Manager of the applicant appeared for the personal hearing and requested to withdraw their instant Revision Application in view of their submissions dated 22.05.2018.
10. The applicant vide its submissions dated 21.05.2018 informed that they had refunded excess refund of Rs. 3,66,025/- [Rs. 6073/ + Rs.2,41,928/ + Rs. 1,18,024/] (Rupees Three Lakh Sixty Six Thousand and Twenty Five only) with applicable interest and submitted the copies of G.A.R.-7 Challans dated 10.03.2015 evidencing the payment of the said dues along with the interest. In view of the same the applicant requested to close the matter.
11. Government observes that that the applicant had filed instant Revision Application against Order in Appeal No US/447/RGD/2012 dated 12.07.2012 which upheld Additional Commissioner, Central Excise, Raigad's Order in Original No. Raigad/ADC/185-187/11-12 dated 14.02.2012 confirming demand of erroneously sanctioned rebate amount of Rs. 6,073/-



3-11

Rs.2,41,928/- and Rs.1,18,024/-with interest. Government further observes that the dues as above confirmed by the Additional Commissioner, Central Excise, Raigad stand paid by the applicant vide G.A.R.-7 Challans dated 10.03.2015 which tantamounts to acceptance of Order in Appeal No US/447/RGD/2012 dated 12.07.2012 and thereby rendering the instant Revision Application infructuous.

12. In view of the above , the Revision Application is dismissed as devoid of merits.

13. So, ordered.

(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 166 /2018-CX (WZ) /ASRA/ DATED 29.05.2018.

To,

M/s United Phosporus Ltd.,
Readymoney Terrace, 167,
Dr. A.B. Road, Worli,
Mumbai 400 018.

True Copy Attested

3/Am
5/6/18
एस. आर. हिरुलकर
S. R. HIRULKAR
CA-(C)

Copy to:

1. The Commissioner, CGST & Central Excise Commissionerate, Belapur.
2. The Commissioner (Appeals), CGST & Central Excise, Raigad.
3. The Deputy Commissioner (Rebate), CGST & Central Excise, Belapur
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File. ✓
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