REGISTERED
SPEED POST

F.No.198/246-248/12-RA
F.No.195/1396/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue 10/7/15

Order No. 17-20/2015-Cx dated 10.07.2015 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 applications filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal as detailed in para (1) of the Order passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III.
Applicant	:	(i) Commissioner of Central Excise, Mumbai Zone-III. (ii) M/s Paper Products Ltd., Thane.
Respondent	:	(i) M/s Paper Products Ltd., Thane (ii) Commissioner of Central Excise, Mumbai Zone-III.

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ORDER

These revision applications are filed by the Commissioner of Central Excise, Mumbai Zone-III (here-in-after referred to as applicant Department) and M/s Paper Products Limited (here-in-after referred to as applicant party) against the Orders-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III with respect to Orders-in-Original passed by the Deputy Commissioner of Central Excise, Wagle-II Division, Mumbai-III as detailed in Table below:

TABLE

Sl. No.	RA File No.	Name of the Applicant	O.I.A. NO. & date	O.I.O. NO. & date (2012-13)
1.	198/246-248/12-RA	CCE, Mumbai-III	BC/192/M-III/2012-13 dt. 27.7.12	05(R)/W-II/2012-13 dt. 20.4.12
2.	198/246-248/12-RA	CCE, Mumbai-III	BC/195/M-III/2012-13 dt. 27.7.12	10(R)/W-II/2011-12 dt. 9.5.12
3.	198/246-248/12-RA	CCE, Mumbai-III	BC/197/M-III/2012-13 dt. 27.7.12	06(R)/W-II/2012-13 dt. 20.4.12
4.	195/1396/12-RA	M/s Paper Products Ltd.	BC/192/M-III/2012-13 dt. 27.7.12	05(R)/W-II/2012-13 dt. 20.4.12

As the issue involved in above Revision Applications are similar, therefore, they are being taken up together for common disposal..

2. Brief facts of the cases are as under:

2.1 M/s Paper Products Ltd., Thane, the manufacturers of goods falling under Chapter 39 of CETA, 1985 have filed rebate claims under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT). The same were rejected by the Deputy Commissioner, Central Excise, Wagle-II Division, Mumbai-III vide the Orders-in-Original in above Table on the following grounds:

2.2 The original authority held the claim of rebate in not admissible as the applicant has availed drawback in respect of the export clearances, and allowing rebate would amount to double benefit.

2.3 The original authority also held that applicant have paid duty on CIF value and claimed rebate of the same, which is incorrect and inadmissible. The FOB value is the value of the goods exported and is the correct transaction value in terms of Section 4 of the Central Excise Act, 1944.

3. Being aggrieved by the impugned Orders-in-Original, applicant party filed appeals before Commissioner (Appeals), who allowed the appeals in favour of the applicant party in respect of cases mentioned at Sr.No.(1) (2) & (3) of the Table above holding that rebate is admissible as only the Customs portion of drawback has been availed. Commissioner (Appeals) did not allow the Party's appeal in respect of case mentioned at Sr. No.(4) of Table above with regard to one ARE-I where correlation with Shipping Bill could not be established.

4. Being aggrieved with the impugned Orders-in-Appeal, both the applicants viz. the Department and M/s Paper Products Ltd., Thane have filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 Grounds in respect of F.No.198/246-248/12-RA filed by the applicant Department:

4.1.1 The respondent has paid Central Excise duty on the CIF value of the impugned goods which include Freight and Insurance and have claimed rebate of the same under Rule 18 of the Central Excise Rules, 2002.

4.1.2 The duty on exported goods should be paid on the FOB value, which is the appropriate transaction value of the goods exported in terms of Section 4 of the Central Excise Act, 1944. The respondent has resorted to payment of duty in excess based on CIF value instead of the transaction value with an intent to make use of the unutilized Cenvat credit lying excess in their credit balance and encash the amount of duty so paid in excess.

4.1.3 The issue as to whether the Central Excise duty should be paid on transaction value of goods or on its CIF value was the subject matter of discussion before the Govt. of India. The Joint Secretary (Revision Application) in case of Shri Bhagirath Textiles Ltd. reported in 2006(202)ELT 147 (GOI) observed that the excise duty is to be paid on the transaction value of goods and not on CIF value. Operative portion of para 8.4 is produced below:

"In the instant case the respondents themselves have admitted in their letter of cross-objection dt. 26.05.2005, that they have paid Central Excise duty on CIF value of the impugned goods for purpose of claiming rebate under Rule 18 of the Central Excise Rules, 2002. Government, therefore, would agree with the contention of the applicant Commissioner that as per provisions of Section 4(1)(a) and 4(2)(d) of Central Excise Act, 1944, the value in terms of Section 4 should be the amount that the buyer of the exported goods is liable to pay. In the instant case the buyer of the exported goods had paid an amount as shown in the Bank realization certificate. In any case the respondents are not liable to pay Central Excise duty on the CIF value of the goods but the central excise duty is to be paid on transaction value of the goods as prescribed under Section 4 of the Central Excise Act, 1944."

4.1.4 Thus the original adjudicating authority rightly rejected the respondent's rebate claim by making this discrepancy as one of the ground for rejecting the same. The Commissioner (Appeals) erred in not taking cognizance of the findings of the original adjudicating authority in this regard.

4.1.5 However, the Commissioner (Appeals), Mumbai-III, Mumbai Zone-II vide her Orders-in-Appeal No. BC/136-140/M-III/12-13 dt. 28.6.12 and BC/185-187/M-III/12-13 dt. 27.7.12, in the case of the same respondent, on a similar issue, had held that "It is settled issue that the Revenue cannot be enriched with the duty element which does not pertain to them. Since the respondents have paid duty over and above the Invoice Value and the refund in cash is sanctionable to the extent of duty payable on FOB Value, the differential duty is allowed as Cenvat credit in their Cenvat credit account." The Commissioner (Appeals) had placed reliance mainly on the judgment of Hon'ble Punjab & Haryana High Court in the case of Industrial Enterprises Ltd. Vs. UOI as reported in 2009(235) ELT 22(P&H) wherein it was held that "refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat Credit is appropriate. As such the excess paid amount may be returned to the respondent in the manner in which it was paid by him initially":

These Orders have been accepted by the Department on 17.7.12 and 11.9.12 respectively.

4.1.6 Thus, the Commissioner (Appeals) has not taken cognizance of her own above said decisions at the time of passing the impugned Orders-in-Appeal and has thereby erred in allowing the respondent's appeal.

4.2 Grounds in respect of F.No.195/1396/12-RA filed by the applicant party

4.2.1 The Commissioner (Appeals) erred in passing the impugned order by travelling beyond the show cause notice as well as the order in original passed by the adjudicating authority in as much as

a. There is not even a whisper in the impugned show cause that the applicants have not submitted required and/or correct documents with respect to the 7 rebate claims filed covering 11 ARE-1s.

b. The adjudicating officer while passing the impugned OIO after following due process of law, has not recorded anywhere in his findings any deficiencies in any of the documents or non-availability of any documents with respect to the claims filed by the applicants. On the contrary the adjudicating officer at para 6 of the impugned OIO has recorded that he has processed the claims and in his observations he has not recorded any such deficiency.

The impugned Order-in-Appeal passed by the Commissioner (Appeals) in as much as disallowance of rebate with respect to the impugned ARE-1 on account of 'absence of documents' is concerned in manifestedly beyond the scope and is without putting the applicant's to notice. On these grounds alone the rebate claimed against the impugned ARE-1 needs to allowed by amending the impugned Order-in-Appeal.

4.2.2 The Commissioner (Appeal) has contradicted herself while recording in her findings at para 8 of her impugned Order-in-Appeal that "in absence of the documents, it cannot be arrived at whether they have availed both the benefits

or otherwise. It is incumbent upon the appellant to submit the necessary documents to cross verify their claim." And yet at para 4 of the impugned order has, in all clear terms, recorded that 'export related necessary documents were filed'.

4.2.3 The Commissioner (Appeal) has confused herself with Shipping Bill No. 65430133 dated 05.12.2011 by trying to correlate the same with impugned ARE-1. Had she gone through the claim submitted by the applicant she would have realized that the correct shipping bill No is 6585275 dated 08.12.2011 and can be correlated with the impugned ARE-1.

5. Show Cause Notices were issued to the applicants under Section 35EE of Central Excise Act 1944 to file their counter reply. M/s Paper Products Ltd., vide their written submission dated 4.5.2015, mainly stated as under:

5.1 The issue involved in all the Orders-in-Appeal is identical, therefore, common submission is being made.

5.2 The adjudicating officer erred in interpreting Rule 18 of Central Excise Rules 2002, which governs the export rebate. The Rule reads as 'Where any goods are exported, the Central Government, may by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.' The language of the law is 'duty paid' and 'not duty payable'."

5.3 The two terms, that is duty paid and payable, have been distinguished by the Madras High Court, used in the context of Rule 57A(1) of Central Excise Rules 1944 in a reference case reported in 2005- TIOL-32-HC-MAD-CX in case of SRF Ltd the Hon. Court held that, 'A perusal of Rule 57A(1) shows that the terminology used therein is 'paid' and not 'payable'. This distinction in our opinion is important because it indicates that we have to take into account the factual state of affairs. In other words, we have to consider whether duty has

actually been paid on the raw material and not whether duty was payable or not.'

5.4 The ratio is squarely applicable in present issue. The terminology used is Rule 18 of Central Excise Rules 2002 is 'duty paid'. Department is trying to establish whether 'duty was payable' which is not relevant in terms of Rule 18 of Central Excise Rules 2002.

5.5 It is true that in following case laws it has been held that the export rebate is payable in cash to the extent of duty payable on transaction value and the excess duty if any paid needs to be refunded in the manner in which it was paid at the time of clearance of goods for export

- Shri Bhagirath Textiles Ltd reported in 2006 (202) ELT 147 (GOI).
- In our own case vide OIA No BC/136-140/M-III/12-13 dt 28-06-12.
- In our own case vide OIA No BC/185-187/M-III/12-13 dt 27-07-12.

The respondents submit that no appeal has been preferred by them against the orders quoted above.

6. Meanwhile, the applicant party filed Writ Petition No.11506 of 2013 in Hon'ble High Court of Mumbai with the prayer of directions to department to implement Orders-in-Appeals Nos. BC/195/M-III/2012-13 dated 27.7.12 and BC/197/M-III/2012-13 {mentioned in Sr.No.(2) & (3) of the Table above} and to allow rebate claims involved in these Orders-in-Appeal along with applicable interest thereon. The Hon'ble High Court vide Order dated 2.2.2015 (received in this office on 11.3.2015) directed the Revisionary Authority to decide the Revision Applications filed against above said two Orders-in Appeal within 4 months from the date of receipt of the said order.

7. Personal hearing was scheduled in this case on 30.3.2015, 17.4.15 and 06.05.2015. Personal hearing was attended by Ms. Shweta Yadav, Assistant Commissioner on 17.4.15 on behalf of the applicant department who reiterated the grounds of revision applications filed by the Department and with regard to

Party's revision application stated that as they had submitted incorrect documents, the rebate has been rightly denied. Ms. Renuka Thyagarajan, Executive Co-ordination attended hearing on 06.05.2015 on behalf of applicant party and made a written submission reiterating the grounds of appeal / cross objections.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Order-in-Appeal. Government notes that since the issue involved in Revision Applications filed w.r.t. Order-in-Appeal No. BC/192/M-III/2012-13 dated 27.7.12 (filed by both applicant party as well as Department) and Revision Applications filed with regard to Orders-in-Appeal No. BC/195/M-III/2012-13 dated 27.7.12 and BC/197/M-III/2012-13 dated 27.7.12 (filed by Department) are either identical or arise from same common Order-in-Appeal, these cases are being taken up together for final disposal by this common Order.

9. Government observes that the applicant party's rebate claims under Rule 18 of Central Excise Rule, 2002 on exported goods were rejected by the Original Authority. It was held that rebate claims are admissible only to the extent of FOB value as against CIF value and also that the rebate claims are not admissible at all as the applicant party have availed drawback and hence, allowing rebate would amount to double benefit. Aggrieved by the impugned Orders-in-Original, the applicant party filed appeal before Commissioner (Appeals) to decide whether they could avail the drawback portion of Customs duty component along with rebate of excise duty paid in terms of provisions of Rule 18 of Central Excise Rules, 2002. Commissioner (Appeals) decided the appeal in all cases in the affirmative holding that rebate cannot be held to be inadmissible if only Customs portion of drawback has been availed. Now, the applicant Department has filed Revision Applications in respect of cases mentioned at S.No.(1) (2) & (3) of Table above on grounds mentioned in para 4.1.

9.1 Government observes that one of the grounds on which the Original Authority held the rebate claims inadmissible was that the applicant has availed drawback benefit and as such, extension of benefit of rebate would amount to double benefit. The Commissioner (Appeals) on this count has decided the cases (barring in case of one ARE-1) in favour of the applicant party after examining the export documents, by holding that as the they have availed only Customs portion of drawback, the rebate claims are admissible in terms of Government of India Order in the case of Benny Impex Pvt. Ltd. reported in 2003(154) ELT 300(GOI). Government notes that this finding of Commissioner (Appeals) has not been agitated by the applicant department in these impugned Revision Applications.

9.2 Government further notes that the applicant Department has filed Revision Applications mainly on the ground that Commissioner (Appeals) has erred in not taking cognizance of the findings of the Original Authority that the rebate claims were made on duty paid on CIF value, while the same is admissible on duty paid on transaction value which is FOB value in these cases.

9.3 On perusal of impugned Orders-in-Appeal, Government notes that the categorical finding of the original authority that rebate claims are admissible on duty payable on transaction value, which is FOB value and not on CIF value, as claimed by the applicant party, has not been agitated before Commissioner (Appeals) and was not an issue at the appellate stage in the impugned cases. The original authority held that FOB value is the value for the goods exported and is in conformity with Section 4 of the Central Excise Act, 1944. Further, in catena of Government of India's Orders some of which as recent as in Order No. 12-15/14-CX dated 28.01.2014 and 359-361/14-CX dated 26.11.2014, it has been held that rebate is admissible on duty paid on transaction value; that place of removal cannot be beyond territorial limit of India; that where the place of removal is port of export, the FOB value will be transaction value and that CIF value cannot be the transaction value for allowing rebate benefit. Government, therefore, finds that the aforesaid finding of original authority to restrict rebate

claims to FOB value, if the rebate is otherwise admissible was not considered and deliberated by the Appellate Authority as it was not contested before the Appellate Authority. As such, the impugned Orders-in-Original restricting the rebate to FOB value continue to hold ground.

9.4 In view of above discussion, Government holds that rebate claims are admissible to the extent of FOB value only, as is rightly held in the impugned Orders-in-Original and the same are upheld to this extent.

10. Further, in respect of Order-in-Appeal No.BC/192/M-III/2012-13 dated 27.07.2012 against which Revision Application No.195/1396/12-RA has been filed by applicant party, Government finds that Commissioner (Appeals) has allowed the rebate after verifying from concerned Shipping Bills that percentage of drawback availed pertains to Customs duty portion only, barring in respect of ARE-1 No.535/11-12 dated 08.12.2011. In respect of the said ARE-1 No.535/11-12 dated 8.12.2011, it has been held by Commissioner (Appeals) that in absence of documents, it cannot be arrived at the conclusion that whether the Party has availed both the benefits or otherwise; that it is incumbent upon the appellant to submit the necessary documents to cross verify their claim; and that hence the appellant's claims in respect of the said ARE-1 cannot be entertained. Now the applicant Party has filed Revision Application on grounds mentioned in para 4.2 above.

10.1 Government notes that with regard to one ARE-1, the Commissioner (Appeals) has observed that for ARE-1 No.535/11-12 dtd. 08.12.2011, the concerned Shipping Bill is 65430133 dated 5.12.2011, whereas the applicant has submitted different copy of Shipping Bill by which it is not possible to correlate the details mentioned therein. As it could not be arrived at whether they have availed both the benefits or otherwise, the claim for ARE-1 No. 535/11-12 was not entertained by Commissioner (Appeals). The applicant has contended that the Commissioner (Appeals) has confused herself with Shipping Bill No.65430133 and had she gone through the claim submitted by them, she

would have realized that the correct Shipping Bill is 6585275 dated 8.12.2011 and that can be correlated with the impugned ARE-1.

10.2 Government finds that in the impugned Order-in-Original, in the details of documents under which the consignment was exported under ARE-1 No.535/11-12 dtd 08.12.2011, the relevant Shipping Bill No. is shown as 65430133 dtd 05.12.2011. The correctness or otherwise of the Shipping Bill number as given in the Order-in-Original was not disputed by the applicant party before the Commissioner (Appeals). As such, contention of applicant that ARE-1 No.535/11-12 dated 08.12.2011 pertains to Shipping Bill No.6585275 dated 8.12.2011 does not hold ground at this stage.

10.3 In view of the above, Government finds that Commissioner (Appeals) has rightly held that the applicant party has failed to establish that only the Customs duty portion of drawback has been availed for exports made vide ARE-1 No.535/11-12 dated 08.12.2011. Hence, there is no cause for interference for the Order passed by Commissioner (Appeals) to this extent.

11. Revision applications are disposed of in above terms.

12. So, ordered.

(RIMJHIM PRASAD)
Joint Secretary to the Government of India

1. Commissioner of Central Excise, Mumbai-III, 4th Floor, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane (West)-400604.

2. M/s The Paper Products Ltd., L.B.S. Marg, Majiwade, Thane (West)-400601.

Attested

(भगवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Revenue)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

GOI Order No. 17-20/2015-Cx dated 10.07.2015

Copy to:-

1. M/s The paper Products Ltd., L.B.S. Marg, Majiwade, Thane (West)-400601.
2. Commissioner of Central Excise, Mumbai-III, 4th Floor, Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane (West)-400604.
3. The Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
4. The Deputy Commissioner of Central Excise, Wagle-II Division, B-91 New Central Excise Building, Wagle Industrial Estate, Thane (West)-400604.
5. PA to JS (Revision Application).
6. Guard File.
7. Spare Copy.

ATTESTED

(B.P. Sharma)
OSD (Revision Application)