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SPEED POST**



F.No. 195/20 to 30, 98 & 100 - 110 /12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue... 11/12/12

Order No. 1719-174/2012-CX dated 10-12-2012 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 orders-in-appeal as mentioned in the table-I passed by Commissioner of Central Excise (Appeals), Visakhapatnam.

Applicant : M/s Trimex Sands Pvt. Ltd., Andhra Pradesh.

Respondent : Commissioner of Central Excise & Customs,
Visakhapatnam-I

ORDER

These revision applications are filed by the applicant M/s Trimex Sands Pvt. Ltd., Andhra Pradesh against the orders-in-appeal as mentioned in column No. 3 of the table passed by Commissioner of Central Excise (Appeals), Visakhapatnam with respect to orders-in-original passed by the Assistant Commissioner of Central Excise, Vizianagaram Division.

S.No.	Name of Respondents	Revision Application F.No.	Order-in-Appeal No.
1-11	M/s Trimex Sands Pvt. Ltd. Andhra Pradesh.	195/20-30/12-RA	29/2011(V-I)(D)CE dt. 03.10.2011
12	-do-	195/98/12-RA	30/2011(V-I)(D)CE dt. 07.12.2011
13-23	-do-	195/100-110/12-RA	31/2011(V-I)(D)CE dt. 07.12.2011
			32&33/2011(V-I)(D)CE dt.08.12.2011
			34&35/2011(V-I)(D)CE dt.09.12.2011
			36&37/2011(V-I)(D)CE dt.12.12.2011
			38&39/2011(V-I)(D)CE dt.13.12.2011
			40&41/2011(V-I)(D)CE dt.14.12.2011

2. Brief facts of the cases are that the applicants are manufactures of 'garnet' falling under Chapter S.H.26179000 as "others" under other Ores & Concentrates" and "Zircon Semi Concentrate" falling under Chapter S.H. 26151000 of the First Schedule to Central Excise Tariff Act, 1985. They exported the said goods on payment of duty and filed rebate claims for the duty paid on the goods exporter under the provisions of Rule 18 of Central Excise Rules, 2002.

2.1 The Assistant Commissioner of Central Excise, Vizianagaram Division, initially sanctioned all the rebate claims.

2.2 These Order-in-Original were reviewed by the Commissioner of Central Excise, Customs and Service Tax, Visakhapatnam-I as per Section 35E(2) of the Central Excise Act, 1944 and consequent review order were passed, directing the Assistant Commissioner of Central Excise, Vizianagaram Division to prefer appeals before Commissioner (Appeals) against the order granting the rebate, on following grounds:-

- (i) Garnet manufactured and exported by the applicants are classifiable under Central Excise Tariff Heading (CETH) 2513.20.30 and is subject to 'nil' duty;
- (ii) Applicant's classification of Garnet Concentrate under CETH 2617.90.00 is not correct and hence not liable to duty;
- (iii) Thus payment of duty on export of Garnet concentrates and subsequent claim of rebate is not correct and maintainable under law.

(iv) In respect of export of Zircon Semi Concentrates, the payment of duty on export of Zircon Semi Concentrates and subsequent claim of rebate is not correct as the process carried out by the applicant does not amount to manufacture. Hence the availment of Cenvat Credit and payment of duty and subsequent sanction of rebate claim was erroneous.

3. Being aggrieved by the said orders-in-original, applicant filed appeals before Commissioner (Appeals) who allowed the appeals of the department by setting aside impugned Orders-in-Original.

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

4.1 That the impugned orders have been passed in contravention of the legal provisions and on the basis of assumptions, presumptions, conjectures and surmises, without properly considering the relevant facts on record. Therefore, the same is liable to be quashed and set aside.

4.2 Being aggrieved by the order of the lower authority the department should have been passed review orders within a prescribed time limit of three months as stipulated in Section 35E(3) of Central Excise Act. The date of communication of the order / decision of the Assistant Commissioner as deciphered from clause 5 of Form EA2 of the Departmental appeal duly attested by the Assistant Commissioner is December 24, 2010. Hence the time period of three months as contemplated in the provision would expire on March 24, 2011. However, the review order passed by the Commissioner is dated May 26, 2011, thus being hit by limitation. It has been held in catena of decision that administrative / executive orders have to be passed within time limit, else the same is not maintainable under law. The applicant rely on the following case laws to support their contention :

- CCE vs. MM Rubber Co. - 1991 (55) ELT 289 (SC)
- Amtrex Hitachi Appliances Ltd. Vs. CCE Ahmedabad - 2009 (234) ELT 126 (T)
- CCE vs. Narendrakumar Taparia - 2008 (225) ELT 141 (T)
- CCE vs. Fujitax India Telecom Ltd. - 2001 (138) ELT 878 (T)
- CCE vs. AZO Dye Chem (2000 (120) ELT 201 (T)
- Sri Digvijay Cement Co. Ltd. Vs. CCE (1991 (52) ELT 631 (T)

4.3 The order passed under Section 35E(2) does not automatically result in recovering the erroneous refund. These orders should be followed by show cause notices under Section 11A, according to which the show cause notices should be issued within six months from the date of actual refund. Since the time limit, for filing an appeal under Section 35E(2), is longer than the time limit prescribed under Section 11A, the show cause notices should precede the proceedings under Section 35E(2), otherwise the order under Section 35E(2) becomes an empty formality and is not enforceable. Similarly, even if the show

cause notices are issued for recovering the erroneous refund within the time limit prescribed under Section 11A without setting aside the order granting erroneous refund under Section 35E(2), no erroneous refund can be recovered. Therefore, the department should initiate proceedings simultaneously under Section 11A within the time limit prescribed therein and also under Section 35E(2) within the time limit prescribed therein. The same view has been upheld in similar judgements in the following case laws :

- Dynamic Technologies Ltd. Vs. UOI – 2005 (186) ELT 277 (Karnataka HC)
- James Robinson India P Ltd. Vs. CCE [2009 (234) ELT 297, CESTAT
- Doothat Tea Estate vs. CCE – 2001 (135) ELT 386 (Tri.)

4.4 The applicant have been issued Show cause notices by the office of the Commissioner of Customs and Central Excise Visakhapatnam-I Commissionerate rejecting the rebate granted earlier, which covers the current rebate claim. The applicant vide their letters dated 15.06.11 & dated NIL respectively responded to the subject show cause notices. The applicants also wish to submit that in respect of orders-in-appeal No. 29/2011(V-I)(D)-CE 31.10.11 they are awaiting for personal hearing while in respect of orders-in-appeal No. 30 & 31 to 41/2011(V-I)(D)-CE dated 7.12.11, the personal hearing for the said notice was held on February 14, 2012 and the decision in both the cases is pending for disposal before the Commissioner / Additional Commissioner. Hence, the Government of India may be pleased to drop the departmental appeal preferred to avoid multiplicity of proceeding on the same disputed point covering the same period.

4.5 In case of order-in-appeal No. 29/2011(V-I)(D)-CE 31.10.11 the Commissioner has erroneously concluded that Garnet concentrate is classifiable under CETH 25132030 attracting nil rate of duty and not under CETH 26179000. It is also submitted that Chapter 25 of the Central Excise Tariff Act, 1985 deals with products which are in the crude state. Since, crude items occur naturally and are not a result of any kind of manufacturing process, such items shall be nil

rated. Chapter 25 of the CETA mentions materials like natural Graphite, natural sands, natural barium sulphate, natural calcium phosphates etc., which are items readily available in the nature. Applicant submits that the garnet concentrate manufactured from beach sand is not in its crude form but is a result of a manufacturing process. Thereby since garnet concentrate is not a crude item but a result of a manufacturing process, it will be classified under Chapter 26 "ores, slug and ash" which is the appropriate chapter of classification for the item. The applicant relied upon the judgement of Apex Court in the case of J G Glass Industries Ltd. – 1998 (97) ELT 5 to support their contention. It is an undisputed fact that garnet concentrate cannot be said to be 'beach sand', the principle raw material after the process of obtaining the mineral ores from the beach sand. The beach sand cannot be said to have retained its character or use even after the conversion into these minerals and hence it would be safe to state the identity of the original article is lost. Thus, the applicant submit that the subject process is a manufacturing process liable to Central Excise Duty. The applicant also submit that 'natural sands of all kinds, other than metal bearing sands of chapter 26' fall under Chapter 25. Since, the process adopted by the applicant gives rise to 'Garnet Concentrate' and not natural garnet' (classifiable under Chapter 25 i.e. CETH 2513 20 30), the appropriate classification for 'Garnet Concentrate' will be under the 2617 90 00 as 'others' under sub classification 26 2617 titled 'Other ores and concentrates' thereby attracting an excise duty of 10%. Hence it is submitted that, Chapter 25 does not even figure in the classification of the item and as per the order the need to classify under the specific heading (in light of the General Rules for interpretation of Schedule to tariff) does not arise. Hence, the appropriate classification of processed Garnet which is not natural Garnet (in its crude form) is under Chapter 26 CETH 2617 90000. The Tribunal held that 'name given by assessee is not relevant but nature of goods and their usage is relevant.' This was re-affirmed by the Apex Court in the case of Swastik Udyog vs. CCE Meerut 2006 (198) ELT 485 (SC). Hence, it is submitted that, even though the product is billed as 'Garnet' by the

applicant, it is not relevant as the 'nature and use' of natural garnet and processed garnet obtained from sand differs.

4.6 The applicants relied upon the judgement in the case of M/s Indian Rare Earths Ltd. Vs. CCE BBSR – I – 2002 (139) ELT 352 (Tri. Kol) where the department themselves contended that rare mineral sands dredged out by physical and mechanical process from ordinary sand amounted to manufacture.

4.7 The applicants had filed an application for registration alongwith a very detailed note on manufacturing process and the department readily accepted the process as manufacturing process and after due process of law, granted registration treating the applicant as a manufacturer of excisable product. If the subject process is not manufacture, the department ought to have initiated proceedings to revoke the registration earlier granted by them accepting that the process amounts to 'manufacture'. Further, it has also been held that orders with regard to issuance and cancellation of licenses (registration) are of a quasi judicial nature.

4.8 The following case laws emphasis the above arguments of the applicants :

- Bharat Chemicals vs. CCE Thane-2004 170 ELT 568 (Tri.)
- Nahar Industrial Enterprises Ltd. Vs. UOI – 2009 235 ELT 22
- CCE Vadodara vs. Jayant Oil Mills – 2009 (235) ELT 223
- Alembic Ltd. Vs. CCE, Vadodara – 2007 218 ELT 607.

5. Personal hearing was scheduled in these cases on 11.06.12, 28.06.12 & 23.07.12 and 04.10.2012 Shri R K Sharma, Sr. Counsel attended the hearing on 23.07.12 and 04.10.2012 on behalf of the applicants who reiterated the grounds of revision application. Nobody appeared on behalf of the respondent side.

6. The department vide their written submission dated 14.06.2012 and 14.09.2012 mainly stated as follows:-

6.1 In respect of para 3 of the grounds of revision application, they submitted that Section 35E (2) of Central Excise Act, 1944 held that there is no limit prescribed under the above Section to call for the record of any proceedings in which an adjudicating authority subordinate to them has passed any order for review.

6.2 Section 35E(3) held that the powers vested in Section 35E(2) are to be exercised within three months from the date of communication of the decision or order of the adjudicating authority. It is to be noted that Commissioners Office and office of the Assistant Commissioner are independent offices, though the Divisional Office is subordinate office to Commissioner's office. The Authorized Officer has mistaken the date of passing of the Order-in-Original as the date of Communication of the order and furnished the same in the EA. 2 filed along with the appeals. This occurred due to inadvertence on the part of the authorized officer and the dates of communication furnished vide this office letters of even number dated 14-06-2012 and 22-06-2012 are hereby confirmed.

6.3 The Quasi judiciary powers vested with Assistant Commissioner are independent and are to be exercised judiciously and independently without having any prejudicial of his lower cadre to that of Commissioner. Hence the date of communication of the decision or order of the adjudicating authority is the date of receipt of order passed become to calculate the period for review by Commissioner. Also, Commissioner himself may call for the adjudication file for review under Section 35(E) means the date on which Commissioner receives the file in his office would be the date for calculation of time period three months for review.

Similarly, Section 35 of Central Excise Act, 1944 says that the time period for filing appeal for the party is sixty days from the date of communication of adjudicating order or decision. In this case also, it will be the date on which party receives the adjudication order will be the date to calculate the sixty days period for filing appeal. The date on which the said adjudicating order was presently dispatched by Assistant Commissioner cannot be taken for calculating the time period for filing appeal by the party.

In a similar analogy, as per Section 35E(3) the date of communication of the adjudicating order is the date on which the order has been received in the Commissioner's office is to be taken for calculating the time period for review.

6.4 The date of receipt of orders-in-original No. 749, 751, 752, 753, 754, 755, 756/R/2010-11 dated 24.12.10 & No. 814, 815, 816 & 819/R/2010-11 dated 28.01.11 were received in the Commissioner Office on 02.03.11 and Date of Review Proceedings concluded in the Commissioner Office is 26.05.11 for all the stated orders-in-original.

6.5 That one of the subject order-in-original No. 30/2011(V-I)(D)CE dated 7.12.2011 was received in this office on 11.05.11 and Commissioner reviewed the same and a decision was taken to file an appeal on 09.05.11, i.e. well within 3 months period as per Section 35E(3) of Central Excise Act, 1944.

The date of receipt of order-in-originals and date of reviews proceedings which are in subject matter given below :

Order-in-Original No. & Date	Date of Receipt of OIO in the Commissioner Office	Date of Review proceedings concluded in the Commissioner Office
2/R/2011-12/ 01.04.11	11.05.11	09.08.11
1/R/2011-12 01.04.11	11.05.11	09.08.11

85/R/2011-12 27.04.11	26.05.11	16.08.11
86/R/2011-12 27.04.11	26.05.11	16.08.11
87/R/2011-12 27.04.11	26.05.11	16.08.11
88/R/2011-12 27.04.11	26.05.11	16.08.11
89/R/2011-12 27.04.11	26.05.11	16.08.11
90/R/2011-12 27.04.11	26.05.11	16.08.11
91/R/2011-12 27.04.11	26.05.11	16.08.11
140/R/2011-12 06.05.11	16.06.11	12.09.11
141/R/2011-12 06.05.11	16.06.11	12.09.11
139/R/2011-12 06.05.11	16.06.11	13.09.11

In view of the statutory provisions, all the above stated case laws relied upon by the applicant in support their case are not applicable in the instant case.

The Authorized Officer has mistaken the date of passing of the Order-in-Original as the date of Communication of the order and furnished the same in the EA. 2 filed along with the appeals. This occurred due to inadvertence on the part of the authorized officer and the dates of communication furnished vide this office letters of even number dated 14-06-2012 and 22-06-2012 are hereby confirmed.

6.6 The applicant's contention is not tenable as the review orders were signed by the Commissioner of Central Excise, Visakhapatnam-I Commissionerate authorizing Sri.K.Satyanarayana Rao, the then Assistant Commissioner of Central Excise, Vizianagaram who, in turn filed the appeals before the Commissioner (Appeals) within one month from the date of receipt of the said review orders in the Divisional Office. In Table 3, the dates mentioned as "Review order signed on" by the applicant are in fact the dates of filing of the appeal by the Assistant

Commissioner and hence the objection raised by them in this regard is not correct.

6.7 As already stated above, it is not the Department's intention to quote wrong dates as the dates of Communication in the letters dated 14-06-2012/22-06-2012 which are different from what was furnished in E.A 2. The mistake occurred at Divisional Office due to some typographical errors while furnishing the date in E.A.2. The dates of conclusion of review proceedings were mentioned to confirm the fact that decision to file an appeal against the said Orders-in-Original was taken well within the time stipulated under section 35E (3) of the Central Excise Act, 1944.

7. The applicant in their written replies dated 20.08.2012, 05.10.2012 and 20.10.2012 apart from re-iterating grounds of revision application, mainly made following cross objections to department's submissions:-

7.1 In para 2 of the submission, the Commissioner has stated as re produced under:

" Paras 3 & 4: Under provisions of section 35 E (3) of the Central Excise Act, 1944, the review order is required to be passed by the Commissioner against the Orders-in-Original passed by the officer below his rank, " within a period of three months from the date of communication of the decision or order of the adjudicating authority". Thus the limitation of three months' period starts from the date of communication of the Orders-in-Original to the commissioner and not from the date of passing such order by the adjudicating authority. In terms of section 35E (4) of the Central Excise Act, 1944, in pursuance of an order under sub-section (1) or sub-section (2), passed by the reviewing authority, the adjudicating authority or the authorized officer makes an application to the appellate Tribunal or the Commissioner (Appeals) within a period of one month from the date of communication of the order under sub-section (1) or sub-section (2) to the adjudicating authority....."

7.2. The instant issue is not alone 'powers of committee of Chief Commissioners of Central Excise or Commissioner of Central Excise to pass certain orders' which is dealt with under section 35E, but of appeals to Commissioner (Appeals) also, which is dealt under section 35 of the Central Excise Act, 1944. As such, both sections 35E as well as section 35 are to be attracted. As per provisions of section 35, a total of 90 days allowed to the agreed person to file an appeal before the Commissioner (Appeals). Section 35B(3), which pertains to appeal before Appellate Tribunal stipulates that every appeal under this section shall be filed within 3 months time. In terms of section 35E (3) the appeal before Appellate Tribunal or Commissioner (Appeals) is required to be filed within 3 months from date of communication of order of adjudicating authority. As per provisions of section 35 E (4) an application to the Appellate Tribunal or Commissioner (Appeals) is required to file an appeal within one month from the date of order of review of the committee of Chief Commissioner of Central Excise or the Commissioner of the Central Excise, as the case may be.

Harmonious reading of the above said provisions clearly prove that the appeal before Commissioner (Appeals) was required to be filed within 3 months in any case. The department chose to avoid these provisions of sub-section 35E (4) while quoting different sub-sections of 35 E in their written submissions. Commissioner (Appeals) failed to consider these contentions of applicant. Commissioner (Appeals) also did not raise the question of time limitation to the department or even or ask for relevant document to establish the counter fact.

7.3 In para 4 of the submission Commissioner has stated as re produced under.

"the power vested in Section 35E(2) are to be exercised within three months from the date of communication of the decision or order of the adjudicating authority."

7.4 The applicant wish to take on each versions of date of communication of the decision or order as submitted by the department, as in EA-2 form filed along with the appeal, and as in aforesaid submission dated 14.06.2012.

7.5 The date of communication of the decision or order of the adjudicating authority are as mentioned by the department in the EA-2 form, vide which those are filed for appeal before Commissioner (Appeals).

7.6 As recorded from the documents provided by the Commissioner (Appeals) to the assessee, it is evident that the actual date of filing of appeals by the department is never the dates 09.08.2011, 16.08.2011 & 12.09.2011 as claimed by the department. But much after that, on or after the review orders are signed by the Assistant Commissioner Mr. K. Satyanarayana Rao on 06.09.2011, 12.09.2011 & 22.09.2011, who might have deposited them before the Commissioner (Appeals) on those dates or on later dates.

7.7 Secondly, the department now claims in their written submission the dates of communication of Order-in-Original as different from what they have already mentioned in the form EA-2. Further, they never mention the date of filing of the appeals; instead they use the 'Date of Review Proceeding concluded in the Commissioner Office', which is irrelevant in the eye of law when date of filing the appeals is disputed. So the 'dates of receipt of Order-in-Original in the commissioner office' as furnished by Commissioner in the aforesaid submission dated 14.06.2012, without corresponding 'date of filing the appeals' cannot be termed legal to arrive at a conclusion that they are filed within the stipulated period of 90 days. On the other hand, from the discussions above it is evident that they have filed the appeals much more after the date mentioned on the respective review orders, as are amply clear from the signature of the Assistant Commissioner Mr. Satyanarayana Rao who was ordered to file the appeals before the Commissioner (Appeals).

7.8 It is evident from the date on which the respective appeals are signed by Assistant Commissioner Mr. K. Satyanarayana Rao, that the department suppressed the fact of actual date of filing the appeal in the respective EA-2 forms. Now, to hide that suppression of fact of actual date of filing the appeals, the department took the way through an afterthought of different 'dates of communication of the orders' which is specified by them as 'Date of receipt of Order-in-Original in the Commissioner office', vide their submission dated 14.06.2012. But these 'new dates of communication of orders' clearly contradicts what they stated earlier in respective EA-2 forms. Had it been the so, there was no compulsion in mentioning them in the EA-2 forms while filing the appeal.

8. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

9. Government observes that applicant exported the goods namely 'garnet' and 'Zircon Semi concentrate' on payment of duty under claim of rebate under the provisions of Rule 18 of the Central Excise Rules, 2002. Original authority initially sanctioned rebate claims vide impugned Orders-in-Original. Department reviewed impugned Orders-in-Original and filed appeals against the said Orders-in-Original. Commissioner (Appeals) decided the appeals in favour of department by setting aside the said Orders-in-Original. Now, applicant has filed these revision applications mentioned in para (4) above.

10. Government observes that the applicant has contended that the orders-in-review passed by the department are time barred in as much as the same any filed beyond stipulated three months period. The applicant in their cross objection to appeal before Commissioner (Appeals) have stated that orders-in-Original were dispatched much before the date of receipt as claimed by the department. As such, the applicant factually disputed the date of receipt of

impugned Orders-in-Original in the office of respondent department. They have also stated that date of receipt of orders is as per dates given in E.A. 2 Form of Appeals filed before Commissioner (Appeals). The respondent department countered this contention of applicant by stating that the orders-in-review were passed within three months from the date of communication of impugned Orders-in-Appeal and hence, are not time barred. The department has pleaded that the dates mentioned in E.A 2 form of appeal was quoted inadvertently. Government finds that applicant raised the these contentions of said review orders being passed beyond statutory time-limit, before the Commissioner (Appeals). The appellate authority simply observed that review orders were passed in stipulated time without discussing the contentions of the applicant. While observing so, the appellate authority has not made any discussion as regard to factual position of this case nor the Commissioner (Appeals) called for factual position from the department on this aspect. Commissioner (Appeals) has also not discussed the applicability of case laws cited by the applicant. Government finds that non-consideration of submission of applicant amounts to violation of principle of natural justice. There are catena of court's judgment, wherein it has been held that non-consideration of submissions of the applicant would vitiate the whole proceedings and order passed without following principle of natural justice would not serve justice in the eyes of law. As such, impugned Orders-in-Appeal are not legal and proper on this count.

10.1 In their cross objections to appeal before Commissioner (Appeals), the applicant has categorically mentioned that they have been issued Show Cause Notices by the office of Commissioner of Customs & Central Excise, Vishakhapatnam- I Commissionerate proposing rejection the rebate granted earlier, which covers the current rebate claim also and hence impugned departmental appeals may be dropped to avoid multiplicity of proceedings on the same disputed points. Government observes that the appellate authority has not given any findings on this contention of applicants. The Government is of opinion

that such contentions are required to be considered and discussed by the appellate authority to meet the justice.

10.2 Government observes that the applicant has contested that the appeal before Commissioner (Appeals) is required to file within 90 days time in any case and it cannot be intention of statute to provide different time limits to assessee and department to file before Commissioner (Appeals). In this regard Government observes that as per section 35E(3) of Central Excise Act, 1944 the Commissioner of Central Excise may review order of adjudicating authority within a period of 3 months. Further, section 35E(4) provides that appeal may be filed within one month from the date of communication of review order made under section 35E (3). From harmonious reading of said provisions, Government is of opinion that the statute provides for total time limit of 3 months plus one month to file an appeal before Commissioner (Appeals) in case where the appeal is filed by department after review of order of adjudicating authority. As such, Government does not agree with the contention of applicant that the appeal is required to be filed within a period of 3 months only. But, since the applicant has disputed the date of communication of orders itself, the appellate authority is required to make necessary verification in terms of observations made in para 10 above.

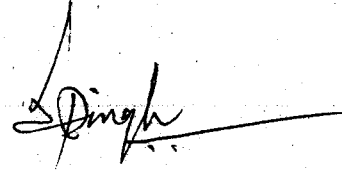
10.3 Government observes that applicant has also disputed the classification of goods and claimed that said goods are rightly classified under CETH 26179000. In this regard Government notes that issue of classification does not fall under category of cases specified in first proviso to section 35B(i) of Central Excise Act, 1944 and the appeal/application on said issue cannot be preferred before Joint Secretary (Revision Application) in terms of section 35 EE of Central Excise Act, 1944. As such revision application on this issue is not maintainable before this authority.

11. The Hon'ble Supreme Court in cases of Canara Bank and others Vs. Shri Debasis Das and other reported in AIR 2003 S.C. 2011; Maneka Gandhi Vs. UOI reported in AIR 597, 1978 SCR(2) 621 and Bar Council of India Vs. High Court, Kerala reported (2004) 6SCC 311 has discussed in details various of principle of natural and held that any judicial proceedings, should follow principle of nature justice to ensure a fair, just and proper judicial proceedings. Government finds that the impugned Orders-in-Appeal, passed without discussing and considering all the submission of applicant w.r.t. issue of time bar, of appeal is not legally sustainable and hence liable to be set aside on this count only.

12. In view of above discussion, Government finds it in the interest of justice to remand the cases back to appellate authority to pass fresh order after considering and discussing submissions of the applicant including case laws cited by them. Sufficient opportunity of hearing may be afforded to parties concerned.

13. Revision Applications are disposed off in above terms.

14. So ordered.

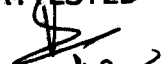


(D P Singh)

Joint Secretary(Revision Application)

M/s Trimex Sands Pvt. Ltd.,
Vatchalavalasa
Srikakulam District,
Andhra Pradesh.

ATTESTED


(भागवत Bhisgwat Sharma)
सहायक आमुक्त/Assistant Commissioner
C.B.E.C-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

GOI Order No. 1719 -1741 /12-CX dated 10-12-2012

Copy to:

1. Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I, Central Excise Building, Port Area, Visakhapatnam – 530 035.
2. Commissioner of Customs, Central Excise & Service Tax, (Appeals) , 4th Floor, Customs House, Port Area, Vishaka patnam-35.
3. The Assistant Commissioner of Central Excise, Near Dandumaramma Temple, Cantonment Area, Vizianagaram, Andhra Pradesh – 535 003.
4. Shri R K Sharma, Sr. Counsel, 157, 1 Floor, DDA Office Complex, CM Jhandewalan Extn., New Delhi-110055.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED



(Bhagwat P. Sharma)
OSD-III(Revision Application)