

**REGISTERED  
SPEED POST**



**F.No. 195/267/11-RA-Cx  
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...11/12/12

ORDER NO. 1748/12-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 THE  
ORDER-IN-APPEAL No. 451(CB)CE/JPR-II/2010 dated  
10.01.2011 passed by the Commissioner of Central  
Excise (Appeals), Jaipur-II.

APPLICANT : M/s Jain Grani Marmo Pvt. Ltd., Udaipur

RESPONDENT : The Commissioner, Central Excise, Jaipur.

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ORDER

This revision application has been filed by M/s Jain Grani Marmo Pvt. Ltd., Udaipur against the order-in-appeal No. 451(CB)CE/JPR-II/2010 dated 10.01.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II arising out of Order-in-Original passed by the Assistant Commissioner, Central Excise Division Udaipur.

2. Brief facts of the cases are that the applicants, a 100% Export Oriented Unit engaged in the manufacturing of marble and granite slabs/tiles. The applicants filed a rebate claim of Rs. 3,74,920 on 14.08.2007 in terms of Rule 18 of the Central Excise Rules, 2002 for duty paid on goods exported under various ARE-1s. However in respect of an amount of Rs. 82,030/- under ARE-1 No. 50/2007-08 dated 15.05.2007, a deficiency letter was issued to the applicants on 30.08.2007. The applicant did not remove the deficiency in respect of ARE-1 No. 50/2007-08 dated 15.05.2007 i.e. non submission of the disclaimer certificate. The applicant again filed the claim on 26.06.2009 for the said ARE-I No. 50/2007-08 dt. 15-05-2007 when they received the disclaimer certificate. A Show Cause Notice was issued to the applicants proposing to reject the rebate claim on the following grounds:-

- (i) It was alleged in the Show Cause Notice that the date of export of the ARE-1 No. 50/2007-08 dated 15.05.2007 was 28.05.2007 and the claim was filed on 29.06.2009 i.e. after expiry of one year from the date of export. Therefore the claim was not admissible being hit by time-bar.
- (ii) It was further alleged that the applicants also paid Basic Customs Duty (BCD) @10% on the exported goods which was wrong, since BCD was not leviable on the exported goods. Basic Customs Duty was also not included in the definition of "Duty" for the purpose of

rebate according to Notification No. 21/2004 -CE (NT) dated 06.09.2004. Therefore refund of the BCD was also not admissible.

- (iii) It was also alleged that since the assessee had the facility of duty free procurement of input and they had not availed benefit of Cenvat Credit Rules, 2004, therefore the assessee wrongly paid duty from PLA on the exported goods. Thus the assessee tried to en-cash their balance lying in PLA, by paying duty on exported goods.

The original authority subsequently rejected the rebate claim as time barred.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeal before Commissioner (Appeal), who rejected the same.

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

4.1 The rebate claim was initially filed on 14.08.2007. Rebate claim was partly allowed to the applicants, however the rebate claim for the balance amount of Rs. 82,030/- relating to ARE-1 No. 50/2007-08 dated 15.05.2007 was withheld by the Revenue Authorities for want of some documents/discrepancies in the original rebate claim. The applicants complied with all the deficiencies pointed out in the letter dated 30.08.2007 from the Departmental Authorities. However the applicants did not receive the disclaimer certificate in respect of ARE-1 No. No. 50/2007-08 dated 15.05.2007 from the merchant exporter and as the applicants received the disclaimer certificate now, they submitted the same along with other relevant papers showing export. However, since rebate claim of balance amount was already sanctioned, a supplementary rebate claim was filed after removing the deficiency pointed.

4.2 The original rebate claim was filed by the applicants at the first instance on 14.08.2007 which was within time according to the provisions of Section 11B of Central Excise Act, 1944. Since the deficiencies pointed out by the department were removed and claim was resubmitted, the rebate claim originally filed on 14.08.2007 is liable to be sanctioned and the same can not be treated as fresh claim.

4.3 The applicant has relied upon same case laws in favour of their contention.

5. Personal hearing scheduled in this case on 10.10.2012 was attended by Shri Shaleen Baheti, Chartered Accountant on behalf of the Applicant who re-iterated the ground of revision application. Nobody attended hearing on behalf of respondent department.

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

7. Government observe that, the applicant exported their goods and filed various rebate claims. In one of the rebate claim, the department issued deficiency letter dated 30-08-2007 to the applicant for submission of disclaimer certificate. The applicant resubmitted their said rebate claim with disclaimer certificate on 26-06-2009. The original authority rejected the rebate claim by observing that the same was filed with all proper documents after stipulated one year in terms of section 11B of the Central Excise Act, 1944. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on the grounds mentioned in para (4) above.

8. Government notes that assessee filed rebate claim on 14-08-2007. The claim was not complete as required under section 11B of Central Excise Act, 1944 and therefore a deficiency memo was issued on 30-08-2007. Assessee did not remove the deficiency in r/o ARE-I No. 50/07-08 dt. 15-05-2007 as he did not submit disclaimer certificate issued by Shree Ram Gravio Marmo Pvt. Ltd., Jalore. Assessee withdraw the said rebate claim in r/o ARE No. 50/07-08 dt. 15-05-2007. However, he filed the said claim again on 29-06-2009 along with disclaimer certificate. Since the original claim was withdrawn by applicant the claim file<sup>d</sup> on 29-06-2009 has to be treated as a fresh claim and time limit to be computed from 29-06-2009. As per section 11B of Central Excise Act, 1944, rebate claim is to be filed with one year from the date of export. In this case claim filed after one year on 29-06-2009 is clearly time barred and rightly rejected by lower authorities.

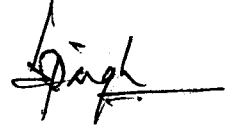
9. Government notes that it has been mentioned in impugned Order-in-Original that the applicant is a 100% EOU. Government finds that 100% EOU are not required to pay duty as per provisions of section 5A (1) of Central Excise Act, 1944 read with Notification No. 24/2003-CE dt. 31-03-2003. As per explanation 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-CE (NT) dated 31-03-2003 issued under section 5(A) (1) of Central Excise Act, 1944 granting unconditional exemption from whole of duty in this case. CBEC has clarified vide letter F.No. 2009/26/09-Cx dt. 23-04-2010 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.

10. 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.

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11. Revision Application is thus rejected in terms of above.

12.. So, ordered.

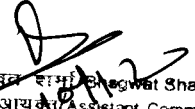


( D.P. Singh )

Joint Secretary to the Government of India

M/s Jain Grani Marmo Pvt. Ltd.,  
N.H.8, Amberi,  
Udaipur(Raj.)

(Attested)



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

Order No. 1748/2012-Cx dated 10-12-2012

Copy to:-

1. The Commissioner Central Excise, Jaipur-II/I New Central Revenue Building, Statue Circle, C-Scheme, Jaipur – 302 005..
2. The Commissioner (Appeals-II), Central Excise, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur – 302 005.
3. Assistant Commissioner, Central Excise Division, Udaipur(Raj.)
- ✓ 4. PS to JS(Revision Application)
5. Guard File
6. Spare Copy.



(Bhagwat P. Sharma)  
OSD (Revision Application)

