

**REGISTERED
SPEED POST**



**F.NO. 195/958-984/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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

Date of Issue.....7/3/13

**ORDER NO. ~~200-226~~/2013-CX DATED 06.03.2013 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 35EE of
the Central Excise Act, 1944 against the Orders-
In-Appeal No. 392-418-CE/MRT-II/20116 dated
29.7.11 passed by the Commissioner (Appeals)
Central Excise, Meerut-II.**

**Applicant : M/s Sidhant Chemicals, Moh. Ther, Sambhal,
Distt. Moradabad.**

Respondent : Commissioner of Central Excise , Meerut-II

ORDER

These revision applications are filed by the applicant M/s Sidhant Chemicals, Moradabad against orders-in-appeal No. 392-418-CE/MRT-II/2011 dated 29.7.11 passed by the Commissioner (Appeals) Central Excise, Meerut-II with respect to respective orders-in-original passed by Deputy Commissioner/ Assistant Commissioner of Central Excise, Division-Moradabad.

2. Brief facts of the case are that the applicants have filed 27 rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-Central Excise (NT) dated 06.09.2004, in respect of Central Excise duty paid on goods exported to different countries on the strength of ARE-Is, mentioned in the respective rebate claims. In respect of the goods exported against the said ARE-Is, the applicants had shown purchase of inputs mostly from various units including the units situated in J&K who were availing area based exemption under Notification Nos. 56/2002 & 57/2002-CE both dated 14.11.2002. The applicants was availing the CENVAT credit of duty paid on the inputs shown to have been procured from the J&K region under the provision of Rule 12 of the CENVAT Credit Rules, 2004. The Adjudicating Authority processed the rebate claims and sanctioned the same vide impugned Orders-in-Original.

3. The impugned orders-in-original were reviewed by the Jurisdictional Commissioner of Central Excise, Meerut-II and appeals were filed before Commissioner (Appeals) on the following grounds:

(a) The Adjudicating Authority has sanctioned the rebate claims without taking into consideration the fact that investigation against the applicants regarding fraudulent availment of CENVAT Credit in respect of inputs shown as purchased from J&K based units was still going on.

(b) The fact that an investigation regarding fraudulent availment of Cenvat credit was in progress against the Applicants, was well before the Adjudicating Authority. The appropriate course of action before the Adjudicating Authority was to wait for the outcome of the investigation initiated against the Applicants and to decide the matter only after taking into consideration the outcome of the ongoing investigations against the Applicants.

(c) As per the available Intelligence, the Applicants was availing CENVAT credit in respect of some raw material on the basis of bogus invoices issued by J&K based unit and utilizing such CENVAT Credit towards payment of duty on their final products for domestic clearance as well as on export of goods under rebate claims. This CENVAT Credit, out of which, the duty was paid by the Applicants on the impugned exported goods, was availed by them in a fraudulent manner and hence the rebate of such duty becomes inadmissible to the Applicants and hence the impugned Orders-in-Original regarding sanction of rebate to them are not maintainable.

(d) The Applicants has taken Suo-moto credit on inputs and used the same to pay Central Excise duty on final products by themselves without any supervision, so the department cannot take any responsibility on whatever adjustments *are* done by them at their level.

(e) The respondent department relies upon the Hon'ble Supreme Court decision in the case of Commissioner of Customs Vs. candid Enterprises reported in 2001 (130) ELT - 404 (SC) where it was held that "Fraud nullifies everything" and hence the sanction of rebate claims on the basis of decisions which have so far been given in favour of the assessee are not sustainable.

(f) The grounds on the basis of which these appeals were filed were not fresh grounds in as much as the fact that investigations were going on against the Applicants was very well before the Adjudicating Authority.

(g) That in the instant case the integrity of the party is under doubt due to available intelligence/information. Such huge refunds/rebates appear to be a fraud on the exchequer by the Applicants only to take benefit of technicalities of law.

3.1 After due process of law Commissioner (Appeals) decided the appeals vide order-in-appeal No.4-24-CE MRT-II/09 dated 20,1,09 and 74 to 79/08 dated 9.5.08 by way of remanding back the case to original authority. The applicant filed revision applications before Central Government against these order of Commissioner (Appeals). The Joint Secretary (RA) vide GOI Order No.605-606/11-CX dated 1.6.11 remanded the cases back to Commissioner (Appeals) for decision on merit. Thereafter Commissioner (Appeals) vide order-in-appeal No.392-418-CE/MRT-II/11 dated 29.7.11, allowed the appeals of department and set aside the impugned orders-in-original.

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

4.1 The applicants submit that the statutory provision contained in Rule 18 provides for sanction of rebate of the duty paid on excisable goods in case any goods are exported after payment of duty. The sanction of rebate claim is subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. The applicants submits that after scrutiny of the rebate claim the jurisdictional authority was satisfied that conditions, limitations including the procedure have been followed by the applicants, therefore after being satisfied the claims were sanctioned. Thus in the subject rebate claims the dispute is not in relation to conditions, limitations and procedure followed by the applicants. The revenue appeals was filed by the department on the ground that Cenvat credit availed by the applicants was under investigation and while the rebate was sanctioned. This

was the position when the revenue appeal was taken up for decision by the Commissioner (Appeals) initially. Subsequently on issuance of order of remand by the Joint Secretary (Revision), further proceedings in the matter of investigation has resulted in issuance of notice to the applicants.

4.2 In the present case the matter relates to proprietary of rebate claim sanctioned by the jurisdictional Assistant Commissioner as per provisions of rule 18 of Central Excise Rules, 2002 read with CBEC circulars and supplementary instructions. There is no dispute regarding infringement of any provisions contained in rule 18 or the relevant CBEC circulars or the supplementary instructions. The dispute is regarding fraudulent availment of Cenvat credit which is governed by provisions of Cenvat Credit Rules, 2004. The export has been undertaken after payment of duty. Proper procedure of export has been followed and is not being disputed. In the circumstances question arises in the matter is whether fraudulent availment of Cenvat can be considered as a reason to deny rebate which is governed by separate provisions of rule 18 of Central Excise Rules, 2002 and whether the provisions of fraudulent Cenvat can override the provisions of rule 18 in the matter governed exclusively by provisions of rule 18. In Para 6 of the order, the Commissioner (Appeals) has rightly pointed out that the issue before him is whether the sanction of the rebate claim was premature. This question has not been answered in the order though taken up initially. Therefore the Commissioner (Appeals) has erred by proceeding to decide the case without deciding whether the sanction of rebate claim was premature.

4.3 The revenue had protected not only the Cenvat allegedly by fraud but had also included the amount of rebate sanctioned to the Applicants as demand. Thus since revenue had already protected the alleged fraudulent Cenvat and had also sanctioned the rebate therefore the Commissioner (Appeals) should have not taken the notice in to consideration. Thus before deciding upon the revenue appeal it was imperative on the part of the Commissioner (Appeals) to decide whether the sanction of rebate claim at the

original stage of investigation was premature keeping in mind also the fact that revenue including sanctioned rebate has been protected. The Commissioner (Appeals) has failed to do so and has decided the issue otherwise before deciding the maturity of the issue though his office himself took up maturity of the sanction of rebate in the very initial stage of deciding the case. Therefore the order is bad in law.

4.4 The applicants also places reliance on other CBEC circulars cited below which specifically asked and directs the proper officer to sanction rebate claims without resorting to delay. Sanction of rebate has also 'been allowed in cash in case duty is paid out of Cenvat. CBEC has not distinguished between Cenvat and fraudulent Cenvat. Had the intent of the circular been to deny rebate in case of fraud the circular would have clarified the situation. In the absence of such clarification rebate allowed by the Assistant Commissioner was fair and justified. The CBEC circular also directs the proper officer to sanction rebate at the earliest without delay. Had the intent been to deny rebate in case of wrong or fraudulent availment of Cenvat the circular would have definitely put restriction or and directed to deny rebate for such cases where Cenvat is in dispute. The said circulars which are binding on the department and being relied upon by the applicants are as under:

- (i) Circular No.687/3/2003-CX dated 3.1.2003
- (ii) Circular No. 670/61/2002-CX dated 1-10-2002
- (iii) Circular No. 24/87 dated 6-5-1987
- (iv) Instruction dated 03.04.2007 issued under F. No. 209/11/2005-CX-6 (CBEC)

4.5 The applicants submits that it is crystal clear from the Board's clarification that the documents listed only should have been considered for sanction of rebate claims and not the Cenvat documents which are not part and parcel of rebate. Moreover CBEC circular dated 03.01.2003 and 01.10.2002 are crystal clear which hold that rebate claim is to be paid in cash

and within three months. In both these circulars there is no reference that in case of dispute of fraudulent Cenvat rebate should be held up or be denied. There is clear cut directive to pay interest on rebate if the sanction is made after three months. CBEC has also clarified that rebate be sanctioned even in case of duty paid on inputs in area based exemptions units like in J&K. In the circumstances there was no reason to deny the rebate. Thus the order of Assistant Commissioner granting rebate was fit, proper and justified.

4.6 Applicants submit that the issuance of the notice upholds their contentions that issue of fraudulent Cenvat is a separate issue governed by provisions of Cenvat Credit Rules, 2004. There are separate provisions under Central Excise law which deals with cases related to fraudulent availment of Cenvat and there also exists separate mechanism to recover such fraudulent availment of Cenvat. If it is alleged that Cenvat credit has been availed fraudulent the mechanism allows the department to deny Cenvat recover interest and impose penalty but there is no mechanism to deny rebate. Therefore the setting aside the orders-in-original is absolutely wrong, not legal and without authority of law

4.7 The Applicants further assert their submission by example of normal business transactions. In normal business transactions between a manufacturer and the buyer if Cenvat is considered fraudulent by the department a notice to show cause is issued to the manufacturer for disallowance and recovery of Cenvat credit of duty but the manufacturer is not forced to either not to recover the duty from the buyers nor the amount recovered from the buyer representing the duty portion is asked to pay to the department before decision of the notice and further decisions through appellate proceedings. Contrary to the above in the present case the duty paid by the Applicants as per provisions of rule 18 is rebated by the department as the same cannot be recovered from the foreign based buyer. The purpose of granting of rebate is to compensate the manufacturer of the duty paid but not recovered from the foreign buyer. By denying the same the

Commissioner (Appeals) has deprived the Applicants what was due to them as transaction value of the export goods (cost paid by the buyer (+) duty to be rebated by the department. It would be noticed that besides demanding fraudulent Cenvat alleged to have been availed by the Applicants, notice has also been issued demanding rebate of Rs.4,24,18,033.00. The said amount of rebate demanded from the Applicants includes the amount of Rs.1,20,17,530.00 sanctioned by the jurisdictional Assistant Commissioner, Central Excise, Moradabad vide 27 orders in original and now set aside by the Commissioner (Appeal).

4.8 Order of Commissioner (Appeals) has added to multiple demands created on same issue. Applicants has already enclosed copy of notice to show cause bearing No.IV-CE(9)CP/Mentha Enquiry/08/08/Pt.6A/1268 dated 19.01.2010 issued by Commissioner, Central Excise, Meerut-II. It would be noticed that in the notice entire amount of Rs.10,34,58,670/- taken as Cenvat credit of duty by the Applicants during the period June 2005 to September, 2008 has been demanded from them. Thus the amount availed as Cenvat for payment of duty claimed as rebate has already been covered in the notice dated 19.01.2010. Therefore denial of rebate amounts to creating two demands against the same credit taken by the Applicants. The duty paid and Cenvat are one and the same therefore when Commissioner, Central Excise has demanded Cenvat credit of duty taken as credit duty paid out of such Cenvat and claimed as rebate by the Applicants cannot be demanded separately. Thus the demand of sanctioned rebate of Rs.10,34,58,670.00 is nothing but duplicity of same amount.

5. Personal hearing was schedule in this case on 21.2.13. On the request of applicant hearing was held on 26.2.13. Shri S.K.Mathur, Advocate and Shri S.C.Dabral, Consultant appeared for hearing on 26.2.13 on behalf of the applicants who reiterated the grounds of revision application and stated that in this case show cause notice No.IV-CE(9)CP/Mentha/Enq/08-09/Part 6A/1268 alleged fraudulently availed cenvat credit from duty was paid on said

exported goods, is still pending adjudication before common adjudicator CCE(Adj), Delhi. Shri D.D.Mangal, Assistant Commissioner, Moradabad appeared on behalf of respondent department who submitted that the orders-in-appeal being legal and proper may be upheld.

6. Government has carefully gone through the relevant case records and perused the orders-in-original and orders-in-appeal.

7. On perusal of records Government observes that the original authority initially sanctioned rebate claim. The department preferred appeal against impugned orders-in-original on the ground that duty was paid on exported goods from fraudulently availed cenvat credit in respect of inputs shown to have been procured from various units including the units situated in Jammu & Kashmir who were availing area based exemptions. The Commissioner (Appeals) set aside the impugned orders and allowed the appeal of the department. Now the applicants have filed these revision applications on the grounds stated at para (4) above.

8. Government notes that applicant is mainly contending that original authority had sanctioned the rebate claims initially after verifying all the documents, as duty paid goods were exported by following the laid down procedure, that the dispute regarding fraudulent avilment of cenvat credit is to be decided in terms of Cenvat Credit Rules 2004, and said proceedings for recovery of wrongly availed cenvat credit cannot be reason to deny rebate claims which are governed by rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04, that revenue interest is already protected by show cause notice No.IV/CE(9)CP/Mentha Enquiry/08/08/Part 6A/1268 dated 19.1.10 issued by CCE Meerut-II for entire amount of Cenvat Credit of Rs.103458670/- taken during the period June 2005 to September 2008, that enquiry in the matter conducted by Noida and J&K Commissioner did not reveal any such discrepancy. On the other hand, applicant

department has stated that impugned orders-in-appeal being legal & proper may be upheld.

9. Government notes that in these cases the duty was paid on exported goods from the cenvat credit and department after conducting investigations in the matter issued a show cause notice as stated above for recovery of said wrongly availed cenvat credit. The applicant has stated that said show cause notice is pending adjudication before common adjudicator, CCE (Adj.) Delhi. Department has also confirmed the same vide letter dated 19.2.13.

10. Government notes that the department has been disputing the payment of duty on the export goods as the duty was paid from wrongly availed cenvat credit, by the manufacturer exporter who is an applicant in this case. Government observes that this issue is yet to be decided in the adjudication proceedings initiated vide show cause notice dated 19.1.10 and outcome of said adjudication proceeding will have a direct bearing in determining the admissibility of said rebate claims. At this stage, Government cannot interfere with the ongoing quasi judicially proceedings before Commissioner of Central Excise (Adj.) in this case by giving any finding on merit of the contentions of applicant claiming correct availment of cenvat credit and also proper payment of duty on exported goods.

11. The governing statutory provisions of grant of rebate are contained Rule 18 of Central Excise Rules, 2002 which reads as under:

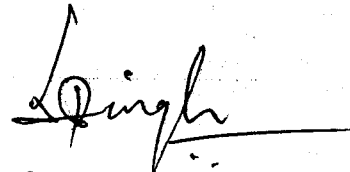
"Rule 18: Rebate of Duty: Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, any fulfillment of such procedure, as may be specified in the notification."

The provision of said rule stipulate that rebate of duty paid an excisable goods exported is admissible. The notification NO.19/04-CE(NT) dated 6.9.04 issued under rule 18, stipulates the condition and procedure to be followed for availing rebate claim. In this case, payment of duty is in dispute and case matter for recovery of wrongly availed Cenvat credit is pending adjudication. In view of above, it would be premature to decide the admissibility of rebate claim till the decision is taken by adjudicating authority in the show cause notice dated 19.1.10. Therefore, in the interest of justice, the case is required to be remanded back for fresh consideration.

12. In view of above position, Government sets aside the impugned orders and remands the case back to the original authority for denovo consideration of rebate claim on the basis of outcome of the above said show cause notice dated 19.1.10 in the ongoing adjudicating proceedings.

13. Revision Applications are being disposed of in above terms.

14. So ordered.



(D.P.SINGH)

Joint Secretary (Revision Application)

M/s Sidhant Chemicals
Moh. Ther, Sambhal,
Distt. Moradabad
(UP)

Attested

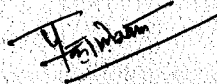
K. RAMESHWARAM
विशेष कार्य अधिकारी/OSD-II (RA)
वित्त मंत्रालय, (राजस विभाग)
Ministry of Finance (Deptt. of Rev.)
नयाँ दिल्ली / New Delhi

Order No. 200-226 /2013-Cx dated 06.03.2013

Copy to:

1. Commissioner of Central Excise & Customs, Meerut-II, Opp. Shaheed Park, Near Ashok Ki Lat, Delhi Road, Meerut-01.
2. Commissioner (Appeals), Customs & Central Excise, Opp. Meerut University, Mangal Pandey Nagar, Meerut.
3. Deputy/Assistant Commissioner, Central Excise & Service Tax Division, Moradabad.
- ✓ 4. PA to JS(RA)
5. Guard File
6. spare Copy.

ATTESTED



(P.K.Rameshwaram)
OSD (Revision Application)