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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 195/626-628/13-RA /1118

Date of Issue: 09.02.2018

ORDER NO. 22-24/2018-CX (WZ) /ASRA/Mumbai DATED 08-02-2018 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. Amines & Plasticizers Ltd., Plot No. 21 & 21 A, TTC MIDC
3, Turbhe, Navi Mumbai.

Respondent : Commissioner of Central Excise, (Appeals), Mumbai-III/
Commissioner of Central Excise, Belapur, Navi Mumbai.

Subject : Revision Applications filed, under section 35EE of the Central
Excise ACT, 1944 against the Orders-in-Appeal No. BC/678-
679 and 680/BEL/2012-13 dated 26.03.2013, passed by the
Commissioner of Central Excise (Appeals), Mumbai-III.



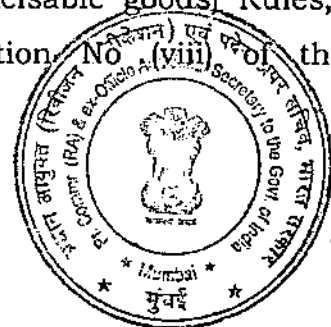
ORDER

These revision applications have been filed by M/s. Amines & Plasticizers Ltd. (hereinafter referred to as "the applicant") against Orders-in-Appeal No. BC/678/BEL/2012-13 dated 26.03.2013 No. BC/679/BEL/2012-13 dated 26.03.2013 and No. BC/680/BEL/2012-13, all dated 26.03.2013, vide which the Commissioner (Appeals) set aside the Orders in Original No. R:27/12-13 dated 22.05.2012, R:35/12-13 dated 11.06.2012 and R:72/12-13 dated 13.08.2012, respectively, passed by the Assistant /Deputy Commissioner, Central Excise Belapur-I Division, sanctioning the rebate claims filed by the applicant.

2. The issue in brief is that M/s. Amines & Plasticizers Ltd. (the applicant) is engaged in the manufacture of Methyl Di-Ethanolamine (MDEA) out of Ethylene Oxide and is also exporting the same. The applicant filed various rebate claims under Rule 18 of the Central Excise Rules, 2002 on account of duty paid on finished goods exported. The Assistant /Deputy Commissioner Central Excise Belapur-I division sanctioned the rebate claims under following orders:
- (i) R:27/12-13 dated 22.05.2012,
 - (ii) R:35/12-13 dated 11.06.2012 and
 - (iii) R:72/12-13 dated 13.08.2012.

3. However, it was observed that the applicant had obtained duty free inputs [(Ethylene Oxide (EO)] from M/s Reliance Industries Ltd. under the procedure prescribed under Notification No. 44/2001-CE (NT) dated 26.6.2011 without payment of duty under Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rules, 2001) against Advance Authorisation. As per condition No (viii) of the said

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Notification, goods manufactured out of the duty free inputs are to be exported as per the procedure prescribed under Notification No. 42/2001-CE(NT) dated 26.6.2011. Notification No. 42/2001-CE (NT) dated 26.6.2011 has been issued under rule 19 of the Central Excise Rules, 2002 & prescribed a procedure for export under Bond without payment of duty. Therefore, the export by the applicant on payment of duty under rule 18 of the Central Excise Rules, 2002 of the goods manufactured out of the duty free inputs was in violation of condition No (viii) prescribed under No. 44/2001-CE (NT) dated 26.6.2011. Therefore, it appeared that the applicant was not eligible for rebate of duty paid under rule 18 of the Central Excise Rules, 2002 and accordingly rebate sanction orders passed by the Assistant Commissioner, Central Excise, Belapur -I division were reviewed as under:

Sl No.	Order in Original No	Rebate Claim No	Amount (in Rs.)
1.	R-27/2012-13	209,210,211,223 & 224	12,49,580/-
2.	R-35/2012-13	64,65,67,70,71,74 & 79	13,67,695/-
3.	R-72/2012-13	157 & 158	2,43,999/-

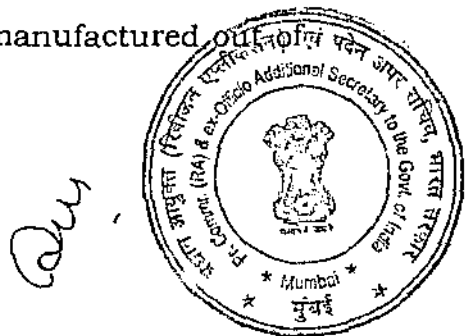
4. Against above mentioned rebate sanction orders, on the basis of review order passed by the Commissioner, Central Excise Belapur, the Assistant Commissioner, Central Excise Belapur -I division filed appeal before the Commissioner (Appeals), Mumbai -III on the grounds mainly stated in Para 3 above. The Commissioner (Appeals), Mumbai -III vide Orders-in-Appeal No. BC/678/BEL/2012-13, BC/679/BEL/2012-13 and BC/680/BEL/2012-13, all dated 26.03.2013 set aside the aforesaid Orders in Original to the extent of rebate sanctioned on the quantity of Methyl Di-Ethanolamine (MDEA) manufactured and exported out of Ethylene Oxide procured duty free under the provisions of Notification No.44/2001-CE(NT) and directed the applicant to pay back the inadmissible rebate amount alongwith due rate of interest.



5. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds that :-

5.1 the rebate claims in question were filed on the exportation of Methyl DI-Ethanolamine (MDEA). The rebate claims were sanctioned. However, the rebate orders were reviewed demanding rejection on the ground that in the above cases the Applicant had procured certain input i.e. Ethylene oxide from M/s Reliance Industries Ltd under the provision of Notification No. 44/2001-CE (NT) without payment of duty after following the procedures of Central Excise (Removal of Goods at Concessional Rate of duty for manufacture of excisable goods Rules, 2001) against an advance authorization. The Applicant manufactured Methyl Di-Ethanolamine (MDEA) out of said Ethylene Oxide and filed rebate claims in respect of the said goods exported. As per the condition No. (viii) of the Notification No. 44/2001, the goods manufactured out the said inputs procured without payment of duty shall be exported following the procedure specified under Notification No. 42/2001 i.e. export without payment of duty under Bond or LUT under Rule 19 of the Central Excise Rules, 2002. Hence, the rebate sanctioned vide aforesaid orders were proposed for recovery alongwith interest.

5.2 at the same time the Assistant Commissioner, Central Excise, Belapur-I Dn. under his letter No. V/Tech-III/APL/ Recovery/ 28/ 2013/ 1601 dated 17.01.2013 demanded Central Excise duty amounting to Rs. 1,42,03,433/- (Rupees One Crore Forty Two Lakhs Three Thousand Four Hundred and Thirty Three) against eight Advance Licences mentioned in the enclosed statement, along with interest on 'Ethylene Oxide' procured by them without payment of duty under Notification No. 44/2001-CE (NT) dated 26.06.2011. The demand was made on the ground that since the finished goods namely Methyl Di-ethanolamine manufactured out of



the said Ethylene oxide were exported under claim of rebate allegedly contravening the condition No. (viii) of Notification No. 44/2001-CE (NT) dated 26.06.2001. Therefore the Applicant is not eligible for the exemption from payment of duty on said raw material (Vide Annexure-C).

5.3 the Applicant under their letter dated 05.02.2013, informed the Assistant Commissioner, Central Excise, Belapur-I Division, Belapur, that they would like to pay excise duty on 'Ethylene oxide' against the said eight licences, wherein they have exported the resultant product 'Methyl Di-Ethanolamine' on payment of duty under claim of rebate. They enclosed a statement which showed that excise duty inclusive of cess of the said Ethylene oxide comes to Rs. 1,37,57,302/- (Rupees One Crore Thirty Seven Lakhs Fifty Seven Thousand Three Hundred and Two). They requested to permit them for payment of the said amount in 12 installments and interest separately. They requested to confirm the availment of Cenvat Credit of the duty so paid against Advance Authorization Licenses (Vide Annexure-D).

5.4 the Assistant Commissioner, Central Excise, Belapur-I Division, considering the request of the Applicant, informed under his letter No. V/Tech-III/APL/Recovery/28/2013 dated 18.02.2013, as under :-

"Please refer to your letter dated 05.02.2013, on the above mentioned subject."

In this connection it is to inform that your proposal to make the payment ,of duty involved on the raw material procured duty free is accepted without the facility of paying in installments.

Accordingly it is hereby requested to make the payments alongwith interest and intimate the particulars of payments to this office".

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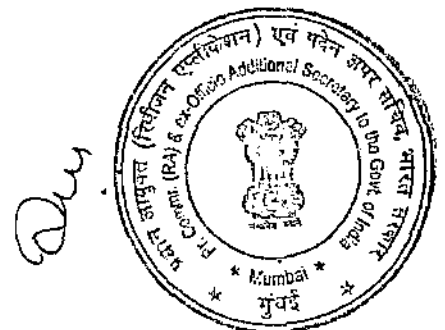


"Upon payment of entire duty alongwith interest you are at liberty to avail the Cenvat Credit of duty paid on inputs". (Vide Annexure-E).

5.5 Pursuant' to the receipt of above permission letter from the Assistant Commissioner, Central Excise, Belapur-I Division, the applicant made the payment of the Central Excise duty in question under the following e-Receipt challans:-

(i) E-Receipt Challan No. 144 Dated 20.02.2013	Rs. 24,65,097/-
(ii)E-Receipt Challan No. 187 Dated 20.03.2013	Rs. 57,74,047/-
(iii)E-Receipt Challan No. 1457 Dated 29.03.2013	Rs. 13,86,999/-
(iv)E-Receipt Challan No. 0538 Dated 05.02.2013	Rs. 41,31,156/-
Total Rs.1,37,57,299/-	

5.6 During the intermediate period many other rebate claims were also filed by the applicant towards the export of said Methyl Di-ethanolamine. Against the same rebate claims Show Cause Notices were issued proposing rejection of the claims on the same ground that of the present one. However, the Assistant Commissioner, Central Excise, Belapur-I Division sanctioned the rebate claims and dropped the Show Cause Notices holding that since the assessee have already paid an amount of Rs. 1,37,57,299/- (Rupees One Crore Thirty Seven Lakhs Fifty Seven Thousand Two Hundred Ninety Nine) towards the duty on the inputs/raw material procured duty free under Advance Authorization, the said inputs/ raw material become duty paid and thus, the export of finished goods using the said inputs/ raw material on payment of duty under claim of Rebate under 18 is in order. Thus the allegations made in the SCN do not survive and the claim for rebate of duty is sustainable and holds accordingly.



5.7 From the above factual position put forth hereinabove it can be clearly observed that after payment of duties attributable to the 'Ethylene Oxide' procured under the subject eight Advance Authorization Licences the restriction imposed under clause (VIII) of Notification No. 44/2001-CE (NT) dated 26.06.2001 does not have any effect on the export of Methyl Di-ethanolamine (MDEA) under claim of rebate, wherein the above 'Ethylene oxide' procured under said eight Advance Authorization Licenses were used. The Jurisdictional Assistant Commissioner, Central Excise, Belapur-I Division, in his rebate sanctioning order cited above has also confirmed that the Applicant has paid the applicable duty on said 'Ethylene Oxide' procured under Advance Authorization and duty paid on the export of such Methyl Di-ethanolamine (MDEA). The Jurisdictional Assistant Commissioner in his letter dated 18.02.2013 asked the Applicant to pay the duty on the said 'Ethylene oxide' procured under Advance Authorization and allowed Cenvat Credit of such duty paid.

5.8 The applicant had calculated the Interest on the duty attributable on the said 'Ethylene Oxide' procured under the Advance Authorization, and submitted to the Assistant Commissioner, Central Excise Belapur-I, Division. The Assistant Commissioner vide his letter no. V/Tech-III/APL/Recovery/28/2013/200 dated 30.04.2013, intimated the Applicant that their interest calculation amounting to Rs. 17,08,739/-is confirmed and directed the Applicant to make payment (Vide Annexure-F). Pursuant to it the Applicant under their e-Receipt challan No. 00854 dated 02.05.2013 paid Rs. 17,08,739/-(Rupees Seventeen Lakhs Eight Thousand Seven Hundred and Thirty Nine) and thereby the issue be deemed to have been closed (Vide Annexure-G).

5.9 The Ld. Commissioner (Appeals) has contended that the representative of the Applicant admitted the Departments contention and

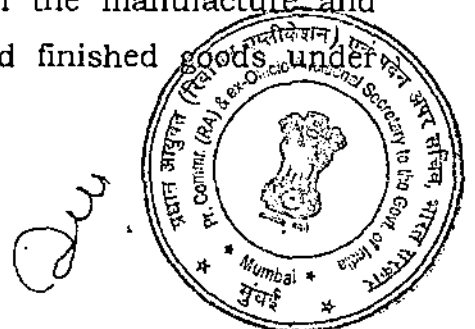
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also submitted that they started repaying the rebate amount. The Applicant submits that the Ld. Commissioner (Appeals) has misrepresented the fact. During P.H. on 12.03.2013, Shri Mishra had recorded in the record of Personal hearing "*started repaying amount as directed by Deptt*". Copy of the record of P.H dated 12.03.2013 is annexed hereto and marked as Annexure-1. From the said record of personal hearing it can be seen that there is no whisper that the Applicant's representative has committed that they have started repaying Rebate amount as contended by the Ld. Commissioner (Appeals) Thus the order passed by the Ld. Commissioner (Appeals) is illegal as the same has been passed without proper appreciation of facts.

5.10 The Ld. Commissioner has not determined the amount to be paid back by the Applicant against the subject Order in Original dated 13.08.2012. Nevertheless it would be worthwhile to state that Notification No. 44/2001-CE (NT) dated 26.06.2001 as amended by Notification No. 32/2003-CE (NT) dated 09.04.2003 has prescribed the procedure & conditions for Removal of intermediate goods without payment of duty and for manufacture and export by holder of DEEC & Advance Licence.

5.11 The condition No. (VIII) referred in the Review order, Department's Appeal and impugned order-in-Appeal and impugned order-in-Appeal provides that the "The goods shall be exported following the procedures specified in the Ministry of Finance (Department of Revenue) Notification No. 42/2001-CE (NT) dated 21.06.2001". The said Notification No. 42/2001-CE has prescribed procedure and conditions for "Export under bond of all excisable goods except to Nepal and Bhutan." It therefore, implies that an Advance Licence holder is entitled to duty free procurement of intermediate goods for use in the manufacture and export of goods, subject to export of the said finished goods under



Bond/LUT in terms of Notification No. 42/2001-CE (NT). Therefore, if the ultimate final products are not exported by the Advance Licence holder under Bond/LUT as per condition (VIII) of said Notification No. 44/2001-CE (NT), the procurement of intermediate goods without payment of duty for the use in the said export goods may be disputed.

5.12 In the instant case the Applicant being holder of Advance Authorization had procured 'Ethylene Oxide' from M/s Reliance Industries Ltd under the provisions of Notification No. 44/2001-CE (NT) and used the same in the production of Methyl Di-Ethanolamine (MDEA) which were exported on payment of duty. The Applicant had claimed rebate of duty paid on the export goods in terms of Notification No. 19/2004-CE (NT) dated 06.09.2004 as amended. The Assistant Commissioner, Central Excise, Belapur-I Dn, in his rebate sanctioning order No. R-35/12-13 has categorically held that all the conditions stipulated in the Notification No. 19/2004-CE (NT) has been fulfilled by the Applicant and accordingly sanctioned all the 17 (seventeen) rebate claims filed by the Applicant, which includes the rebate claims denied by the Ld. Commissioner (Appeals) under his impugned Order-in-Appeal.

5.13 Thus the sanctioned rebate claim cannot be ordered for recovery on the ground that the Applicant has not followed the condition No. (VIII) of Notification No. 44/2001-CE (NT) Central Excise Duty liable on Ethylene Oxide procured without duty and used in the manufacture of Methyl Di-Ethanolamine exported. There is no legal backing for recovery of rebate of duty paid on excisable goods, when there was no violation of relevant Notification No. 19/2004-CE (NT), as amended by the Applicant. However, the Review Order of the grounds of Department's appeal did not seek recovery of duty involved in the 'Ethylene Oxide' procured without payment for violation of condition No. (VIII) of Notification No. 44/2001-

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CE (NT), to the extent used in the manufacture of Methyl Diethanolamine (MDEA) and exported under claim of rebate.

5.14 Therefore, the Applicant is entitled to the rebate claim and the impugned Order-in-Appeal dt. 26.03.2013 is illegal on the face of the facts and law.

5.15 TIME BAR

Without prejudice to the above submission, the Applicant humbly submit that the Review Order was passed by the Commissioner on 13.12.2012 in exercise of the power vested in him under sub-section (2) of Section 35 E of the Central Excise Act, 1944. The sub-section (3) there-under has prescribed the time limit for passing any order under sub-section (1) or sub-section (2). which is extracted below :-

Section 35 E (3) "Every order under sub-section (1) or sub-section (2), as the case may be, shall be made within a period of three months from the date of communication of the decision or order of the adjudicating authority."

The sub-section (3) of the Section 35 E of the Central Excise Act, 1944, is therefore, specific and does not allow any concession for deviation in passing any review order beyond three months from the date of communication of decision or order of the adjudicating Authority. The office of the Adjudicating Authority and the Reviewing authority i.e. the Commissioner of Central Excise, Belapur, are situated in the CGO Complex, C.B.D. Belapur, Navi Mumbai. Therefore, there cannot be any delay in communicating the order beyond a nominal period of a day or two. It was primary responsibility of Ld. Commissioner (Appeals), as to whether the appeal is valid in the eyes of law and qualifies for admittance. However, he has failed and accepted the subject appeals

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filed by the Department on 04.01.2013, agitating impugned order-in-original No. R-35/2012-13 dated 11.06.12 combinedly against R-27/2012-13 dated 22.05.12 and R-72/2012-13 dated 13.08.2012 by virtue of Review order No. V (Tri-cel)/Rebate/Bel-1/12-A/12-13/941 dated 13.12.2012. Three Months' time prescribed in Section 35 E (3) of the Central Excise Act, 1944, for passing a Review order expired in each case as mentioned below:

Order-in-Original No. & date Date of Expiry of three month

(a) R-27/2012-13 dated 22.05.12 -----22.08.12

(b) R-35/2012-13 dated 11.06.12 -----11.09.12

(c) R-72/2012-13 dated 13.08.12 ----- 14.11.12

5.16 Therefore, undoubtedly, the Review order dated 13.12.2012 was passed beyond the permissible time of three months in violation of sub-section (3) of Section (3) of Section 35 E of the Central Excise Act, 1944 and thus has no legs to stand in the eyes of law. It was the fundamental responsibility of the Ld. Commissioner (Appeals) to look into this aspect before admitting and taking up the appeal irrespective whether pointed out by the Applicant or not, following the doctrine of natural justice. The impugned order-in-Appeal No. BC/680/BEL/2012- 13 dated 26.03.2013 is illegal and infructuous, hence seeks to be set-aside on this ground alone.

5.17 The Hon'ble High Court of Himachal Pradesh in the case of Commissioner of Central Excise V/s Bhillai Wires Ltd, reported in 2009 (236) ELT 40 (HP) has held that the question with regard to maintainability of legal question can be raised at any stage of the proceedings and the Review order not passed within time limit provided

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in Section 35 E (3) of the Central Excise Act, 1944 is not maintainable. The said judgment is re-produced below:-

2009 (236) E.L.T. 40 (H.P.) COMMISSIONER OF CENTRAL EXCISE Versus BHILLAI WIRES LTD.

Appeal by Department - Maintainability of - Whether appeal itself maintainable or not, is a legal question and the question with regard to maintainability of a legal question can be raised at any stage of the proceedings - Section 35E of Central Excise Act, 1944. [para 12]

Appeal by Department - Limitation - Reviewing authority not exercised his powers within a period of one year as provided in Section 35E(3) of Central Excise Act, 1944 - Direction to file an appeal was illegal - Appeal filed by Department on basis of such direction itself was not maintainable - Section 35E(3) ibThe Order-in-Appeal was passed on the extraneous grounds which were not even discussed in Order-in-Original i.e. Triplicate and Quadruplicate copy of ARE-1s were not furnished by the Applicant within 48 hours of clearances of the goods; there was no verification of duty paid nature of goods; and rebate claim was time barred;

Therefore review order passed on 13.12.2012 is beyond the period of three months and in violation of Section 35E(3) ibid.

Appeals are time barred. OIA is illegal and infructuous hence liable to be set aside. Case Law relied upon:

- i. 2009 (236) ELT.40 (H.P.)
- ii. -- 1991 (55) elt.289 (S.C.)
- iii. 2012 (285) ELT. 151 (G.O.1.)
- iv. 2012 (286) ELT. 135 (Tri.Del.)
- v. 2009(234) ELT 126(Tri. Ahmd.)

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6. A Personal hearing was held in this case on 31.01.2018 and Shri M.P. Mishra, Vice President, Plant and Shri B.B. Mohite, Advocate duly authorized by the applicant appeared for hearing and reiterated the submission made in three Revision Applications and pleaded that in view of submissions and case laws cited, the impugned Order-in-Appeal be set aside and Revision Application be allowed.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Orders-in-Original and Orders-in-Appeal. On perusal of records, Government observes that while allowing the appeal filed by the department, Commissioner (Appeals) in impugned Orders noted that

"the applicant had opted to work under Rule 19 by procuring raw materials duty free under Not. No. 44/2001-C.E. (N.T.). A combined reading of sub-rule 19(1)/ 19(2) and Not. No. 44/2001-C.E. (N.T.), dated 26-6-2001 as amended reveal that export goods manufactured from raw materials procured duty free under Not. No.44/2001-C.E. (N.T.) are to be exported under bond in terms of Rule 19(1) of CER 2002. Once the exporter chooses to procure inputs duty free under Not. No. 44/2001-C.E. (N.T.), he is bound to export goods manufactured out of such inputs under bond in terms of Rule 19(1) ibid. Once, the exporter opts for Notification No. 44/2001, he has no choice to export goods under claim for rebate under Rule 18 of Central Excise Rules, 2002. It is mandatory for the exporter to export goods under bond only. Both the schemes under Rule 18 and Rule 19 are different schemes covered under separate notification, procedures, safeguards and conditions. Hence, no rebate is admissible to the respondents on the goods exported using the duty free inputs".

8. In this regard Government observes that during the intermediate period many other rebate claims were also filed by the applicant towards the export of

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said Methyl Di-ethanolamine. Against the same rebate claims Show Cause Notices were issued proposing rejection of the claims on the same ground as the one in the present case. However, the Assistant Commissioner, Central Excise, Belapur-I Division sanctioned the rebate claims and dropped the Show Cause Notices. The observations of the Assistant Commissioner in such orders are reproduced below :-

(i) Order No. R-203/12-13 dated 22.03.2013

- (a). The claimants vide their letter dated 05.02.2013 have expressed their desire to pay the duty involved on the raw material procured duty free and this office vide letter No. F. No. V/Tech-III/APL/Recovery/28/2013 allowed them to make the payment along with interest. Accordingly, the claimants have partly paid an amount of Rs. 24,65,097/- vide challan No. 00144 dated 20.02.2013 and Rs. 57,74,047/- vide challan No. 00187 dated 20.03.2013.
- (b) Since, the assessee have already paid an amount of Rs. 82.39 Lakhs towards duty on the inputs/R. M. procured duty free under Advance Authorization, the said Inputs/R.M.become duty paid and thus, the export of finished goods using the said inputs/R.M. on payment of duty under claim of Rebate under 18 is in under. Thus, the allegations leveled in the SCN do not survive and the claim for rebate of duty is sustainable and I hold accordingly. Hence, I do not intend to discuss about the various case laws cited and replied upon by the claimants.

(ii) Order No. R-202/12-13 dated - 18.03.2013

- (a) The claimants vide their letter dated 05.02.2013 have expressed their desire to pay the duty involved on the raw material procured duty free and this office vide letter No. F. No. Virech-III/APU/Recovery/28/2013 dated 18.02.2013 allowed them to make the payment along with interest. Accordingly, the claimants have partly paid an amount of Rs. 24,65,097/- vide challan No. 00144 dated 20.02.2013.



- (b) Since the assessee have already paid an amount of Rs. 24.65 Lakhs towards duty on the inputs/R.M. procured duty free under Advance Authorization, the said inputs/R.M. become duty paid and thus, the export of finished goods using the said inputs/R.M. on payment of duty under claim of Rebate under 18 is in order. Thus, the allegations leveled in the SCN do not survive and the claim for rebate of duty is sustainable and hold accordingly. Hence, I do not intend to discuss about the various case laws cited and replied upon by the claimants.

(iii) Order No. 03 (R) 13-14 dt. 01.04.2013.

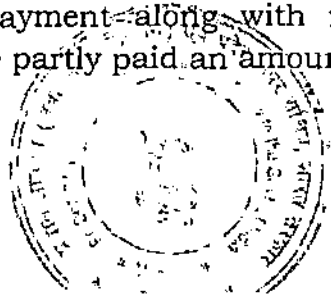
- (a) I find that the claimant vide their letter dated 05.02.2013 have expressed their desire to pay the duty involved on the raw material procured duty free and this office vide letter F. No. Vifech-lil/APL/Recovery/28/2013 dated 18.02.2013 allowed them to make the payment along with interest. Accordingly the claimants have partly paid an amount of Rs. 24,65,097/- vide challan No. 00144 dated 20.02.2013 and Rs. 57,41,047/- vide challan No. 00187 dated 20.03.2013 and Rs. 13,86,999/- vide challan No. 01457 dated 29.03.2013.

- (b) Since the assessee have already paid an amount of Rs. 96.26 lakhs towards duty on the inputs/R.M. procured duty free under Advance Authorization, the said inputs/R. M. becomes duty paid and thus, the export of finished goods using the said inputs/R. M. on payment of duty under claim of Rebate under 18 is in order. Thus the allegations leveled in the SCN do not survive and the claims for rebate of duty are sustainable and hold accordingly.

(iv) Order No. 04(R)/ 13-14 dt. 09.04.2013

- (a) The claimants vide their letter dated 05.02.2013 have expressed their desire to pay the duty involved on the raw material procured duty free and this office vide letter F. No. V/Tech-III/APL/Recovery/28/2013 dated 18.02.2013 allowed them to make the payment along with interest. Accordingly, the claimants have partly paid an amount of Rs.

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24,65,097/- vide challan No. 00144 dated 20.02.2013 Rs. 57,74,047/- vide challan No. 00187 dated 20.03.2013, Rs. 13,86,999/- vide challan No. 01457 dated 29.03.2013 and Rs. 41,31,156/- vide challan No. 538 dated 05.04.2013.

- (b) Since the assessee have already paid an amount of Rs. 137.57 Lakhs towards any duty on the inputs/R.M. procured duty free under Advance Authorization, the said inputs/R.M. become duty paid and thus, the export of finished goods using the said inputs/R.M. on payment of duty under claim of Rebate under 18 is in order. Thus the allegations leveled in the SCN do not survive and the claim for rebate of duty is sustainable and hold accordingly. Hence, I do not intend to discuss about the various -case laws cited and replied upon by the claimants.

9. Government observes that the Jurisdictional Assistant Commissioner, Central Excise, Belapur-I Division vide his letter dated 17.01.2013 demanded duty of Rs.1,42,03,433/- (Rupees One Crore Forty Two Lakhs Three Thousand Four Hundred and Thirty Three) on Ethylene Oxide procured duty free from the applicant along with 18% interest. While doing so, the applicant was informed vide said letter that they had deliberately exported finished goods namely Methyl Diethanol Amine (manufactured from the Ethylene Oxide procured without payment of duty), on payment of duty under claim of rebate under Rule 18 in contravention of the condition no. (viii) of Notification No.44/2001(CE(NT) dtd.26.06.2001 and as per the obligation of the Bond executed and submitted by them (for procuring Ethylene Oxide without payment of duty) which bound them to make payment on breach or failure in the performance of any part of the conditions, they are required to make the payment of Central Excise duty leviable on Ethylene Oxide procured by them from M/s Reliance Industries Ltd. under Notification No.44/2001(CE(NT) dtd.26.06.2001.

10. Government further notes that the applicant vide letter dated 05.02.2013 informed Assistant Commissioner, Central Excise, Belapur-I Division that they

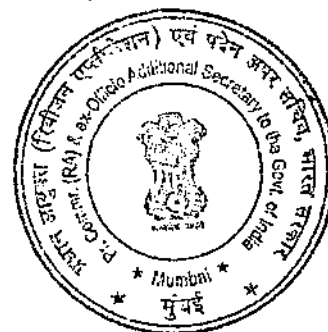


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desire to pay duty amounting to Rs.1,37,57,299/- (Rupees One Crore Thirty Seven Lakhs Fifty Seven Thousand Two Ninty Nine) , thereafter they shall be availing cenvat credit of the same. Assistant Commissioner, Central Excise, Belapur-I Division vide letter dated 18.02.2013 informed the applicant that upon payment of entire duty alongwith interest, you are at a liberty to avail Cenvat Credit of duty paid on inputs. Accordingly applicant paid duty and interest vide Challan No. 00144 dated 20.02.2013 duty Amount Rs.24,65,097/- Challan No. 00187 dated 20.03.2013 duty Amount Rs.57,74,047/- Challan No. 01457 dated 29.03.2013 duty Amount Rs.13,86,999/- Challan No. 00538 dated 05.04.2013 duty Amount Rs.41,31,156/- TOTAL DUTY AMOUNT Rs.1,37,57,299/-. The applicant also paid Interest Amt. of Rs.17,08,739/- vide Challan No. 00854 dated 02.05.2013.

11. From the factual position as detailed supra the Government observes that the restriction imposed under clause (viii) of Notification No. 44/2001-CE (NT) dated 26.06.2001 will apply only when the inputs were procured duty free under Advance Authorization Licences. Once the applicant has been made to pay the duties of Excise for breach or failure in the performance of any part of the conditions of Notification No. 44/2001-CE (NT) dated 26.06.2001, the prescribed procedure and conditions under Notification No. 42/2001-CE, which is issued under rule 19 of the Central Excise Rules, 2002, will also not be applicable for export of goods manufactured out of such duty paid inputs.

12. Government finds it pertinent to refer to Commissioner of Central Excise, Belapur Commissionerate's letter dated 03.07.2013 addressed to the Joint Secretary (RA) New Delhi regarding instant revision application filed by the applicant. At para 5, 6 and 7 of the said letter, Commissioner, Central Excise, Belapur has stated that



“5. Reference in the subject matter was made to the Chief Commissioner, Mumbai Zone - II. The Chief Commissioner, Mumbai Zone - II clarified that duty foregone on inputs procured duty free under Notification No. 44/2001-CE (NT) dated 26.6.2011 to be recovered. Accordingly, the applicant remitted the duty foregone on inputs procured duty free as mentioned at Page No. 9 of their applications along with interest due thereon. Thus, their rebate sanction of duty paid on final product became regular.

6. During the pendency of the appeals filed by the Assistant Commissioner, Central Excise Belapur-I division, the applicant's subsequent rebate claims of duty paid on final products were sanctioned on production of proof of payment of duty foregone involved in the inputs procured duty free along with interest thereon.

7. **Since, the applicant has paid back the duty foregone on inputs procured duty free; the raw-material became duty paid raw-material. Accordingly, the assessee would be eligible for the rebate of duty paid on the finished goods exported by them. These facts could not be brought to the notice of the Commissioner (A) as the duty on the raw-material was paid along with interest by the assessee after the Orders-in-Appeal were passed. Hence, the subsequent developments are brought to the notice of the Revisionary Authority for taking appropriate decision as deemed fit in respect of the appeals filed by the assessee”.**

13. From the above, Government observes that by demanding duty forgone on inputs procured duty free alongwith interest, the Revenue has denied the benefit of Notification No. 44/2001-C.E. (N.T.), dated 26-6-2001 to the applicant. Once the exporter is beyond the purview of Notification No.

Duty



44/2001-C.E. (N.T.), he is not bound to export goods under bond only in terms of Rule 19(1) of Central Excise Rules, 2002.

14. Government further observes that Commissioner (Appeals) at para 5 of impugned order has stated that the representative admitted the Department's contention and also submitted that they started repaying the rebate amount. In this regard, the applicant has submitted that the Ld. Commissioner (Appeals) has mis-represented the fact. From the copy of the Personal Hearing Memo dated 12.03.2013 appended to the Revision Application, Government has noticed that Commissioner (Appeals) has written "*started repaying amount as directed by Deptt*". What was demanded from the applicant by the Assistant Commissioner, Central Excise, Belapur-I Division vide letter dated 17.01.2003 was duty on Ethylene Oxide procured duty free along with 18% interest and therefore Commissioner (Appeals) findings that "the applicant have started repaying rebate amount" is extraneous and out of context.

15. On merit, it is seen that the applicant has exported the goods on payment of duty and genuineness of export and payment of duty has been accepted by the department. It is the contention of the department that the applicant is eligible for rebate of duty paid on the finished goods exported by them. In view of the above Government holds that the applicant is eligible for rebate of duty on the goods exported under Rule 18 of Central Excise Rules, 2002. Hence, the three Revision Applications are liable to be allowed and the impugned Orders in Appeal are liable to be set aside.

16. Government further observes that apart from above point of dispute on merit of the case, the applicant submitted about the status of review/appeal of the impugned order-in-original by the jurisdictional Commissioner of Central Excise under Section 35E(2) and 35E(3) of the Central Excise Act, 1944 being time-barred. On the point of limitation, the applicant submitted that the review and filing of appeal has been done in this case after the stipulated period of

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three months and hence appeal was clearly time- barred. In this regard, Government notes that in terms of Section 35E(2) & 35E(3) of the Central Excise Act, 1944 the relevant review order has to be necessarily made within the stipulated period of three months from the date of communication of relevant orders-in-original.

17. As per the records available before this authority it is observed that all the three Orders in Original were reviewed by Commissioner of Central Excise, Belapur by virtue of a common Review order No. V (Tri-cel)/Rebate/Bel-1/12-A/12-13/941 dated 13.12.2012 and the appeals were filed before Commissioner (Appeals) by the Department on 04.01.2013 as detailed below:

Sl. No.	Order in Original No. and date	Despatch No. & Date of the Order in Original	Date of Review Order
1.	R-27/2012-13 dated 22.05.12	264/ 22.5.2012	13.12.2012
2.	R-35/2012-13 dated 11.06.12	367/ 17.06.2012	13.12.2012
3.	R-72/2012-13 dated 13.08.12	652/14.08.2012	13.12.2012

From above table Government observes that all the three Orders in Original have not been reviewed within three months of communication of impugned orders-in-original. Therefore, Government finds the plea of applicability of "Time-bar" as hitting to the legality of the said orders of review and appeal by the department as correct. Government holds that review orders and appeal were time-barred. Thus, the Orders in Appeal emanating from such time barred appeals are not held legal and proper and liable to be set aside.

18. In the light of the aforesaid discussion, Government holds that the impugned Orders in Appeal are not proper and legally sustainable on merit, as

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well as, on limitation and hence the same are set aside and the Orders in Original passed by Assistant/Deputy Commissioner, Central Excise, Belapur-I Division are upheld.

19. Accordingly, the three revision applications filed by the applicant succeed with consequential relief.

20. So ordered.

Ashok Kumar Mehta
08.2.18

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

ORDER No ~~22-24~~ 23-24/2018-CX (WZ) /ASRA/Mumbai DATED 8/2/2018.

True Copy Attested

To,
M/s. Amines & Plasticizers Ltd.,
Plot No. 21 & 21 A,
TTC MIDC, 3, Turbhe, Navi Mumbai

S. R. Hirulkar
9/2/18

एस. आर. हिरुलकर
S. R. HIRULKAR

Copy to:

1. The Commissioner of GST & CX, Belapur Commissionerate.
2. The Commissioner, Central Excise, (Appeals) Raigad.
3. The Deputy / Assistant Commissioner, GST & CX Mumbai Belapur.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

