

REGISTERED
SPEED POST



F.NO. 195/826-837, 901-909, 937-953, 988-1000/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue. 20.03.2013

ORDER NO. 234-284 /2013-CX DATED 20.03.2013 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 passed by the Commissioner (Appeals)
Central Excise, Meerut-II as per Column No.4 of
the table in para 1 of this order.
- Applicant : As stated at Column No.2 of the table in para 1 of
this order
- Respondent : Commissioner of Central Excise, Meerut-II

ORDER

These revision applications are filed by the applicants, as mentioned at column No.2 of the given table, against the orders-in-appeal numbers as mentioned at column No.4 of the table passed by Commissioner of Customs & Central Excise (Appeals) Meerut-II:

Sl. No.	Name of the Applicant	Revision Application No.	Order-in-appeal No. & Date	Amount involved
(1)	(2)	(3)	(4)	(5)
1	M/s Ansar Chemicals, Sambhal, Moradabad	195/826-837/11-RA	344-355-CE/MRT-II/2011 30.06.11	9584366.00
2	M/s Neeru Enterprises, Civil, Lines, Rampur	195/901-909/11-RA	306-314-CE/MRT-II/2011 30.06.11	3389902.00
3	M/s Narain Terpen & Allied Chemicals, Dhanaura, J.P.Nagar	195/937-953/11-RA	262-278-CE/MRT-II/2011 .06.11	8443114.00
4	M/s Exotic Agro Exports, Moradabad	195/988-1000/11-RA	292-304-CE/MRT-II/2011 30.06.11	4881729.00

2. Brief facts of the case are that the applicants have filed various 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 were 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 Orders-in-Original as stated in impugned orders-in-appeal.

3. The said 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 investigations 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 were 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 parties are 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 Commissioner (Appeals) considering the ongoing investigation and show cause notice issued pertaining to the fraudulent availment of the cervat credit in respect of inputs was still pending adjudication before competent authority held that the sanction of the rebate claim was premature. Hence, he accordingly set aside the impugned orders-in-original viewing that the Justice would ultimately rest with the justified beneficiary when the show cause notice issued in the matter is finally adjudicated.

4. Being aggrieved by the impugned orders-in-appeal, the applicants have filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following common 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 submit 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 avilment 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 CBECE 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. CBECE 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, notices have also been issued demanding rebate of Rs.22185862.00; Rs.13934538.00; Rs.20519984.00; Rs.4284883.00 respectively. The said amount of rebate demanded from the Applicants includes the amount of Rs.9584336.00; Rs.23389902.00; Rs.8443114.00; Rs.4881729.00 respectively sanctioned by the jurisdictional Assistant Commissioner, Central Excise, vide various orders in originals and now set aside by the Commissioner (Appeal).

4.8 Order of Commissioner (Appeals) has added to multiple demands created on same issue. Applicants have already enclosed copy of notice to show cause bearing No.IV-CE(9)CP/Mentha Enquiry/08/08/Pt.9/1097 dated 15.01.2010; No.IV-CE(9)CP/Mentha Enquiry/Neeru/08/08/Pt.II/108 dated 5.01.2010; No.IV-CE(9)/Mentha Enquiry/08/08/Pt.16A/3028 dated 7.02.2010; No.IV-CE(9)/Mentha Enquiry/08/08/Pt.4/3175 dated 19.02.2010 issued by Commissioner, Central Excise, Meerut-II. It would be noticed that in the notices entire amount taken as Cenvat credit of duty by the Applicants during the disputed period has been demanded from them. Thus the amount availed as Cenvat for payment of duty claimed as rebate has already been covered in the above show cause notices. Therefore denial of rebate amounts to creating

two different demands against the same credit taken by the Applicants in the each case. 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 are nothing but duplicity of same amount.

4.9 Notwithstanding the above submissions, the Applicants further submit that in case the Hon'ble Joint Secretary (Review) also take a view that rebate claim of duty paid from the fraudulent Cenvat credit is not permissible the present Revision Application be kept on record pending decision on the issue of admissibility of Cenvat credit by competent authority so as to avoid multiplicity of demands against the Applicant and parallel proceedings against the Applicant before two different forum for the same issue i.e. admissibility of Cenvat credit and acceptability of duty paid from such Cenvat credit for sanctioning rebate claim. The Joint Secretary (Review) may take up the revision application for decision only after the main issue of admissibility of Cenvat credit is finally decided. However it is added that till the present application of the Applicant is decided stay be granted from recovery of rebate.

4.10 Case relied upon:

- CCE Vadodara Vs Dhiren Chemical Industries 2002 (143) ELT 19(SC)
- UOI Vs Arviva Industries (I) Ltd. 2007 (209)ELT 0005 (SC)

5. Personal hearing was scheduled in this case on 21.2.13. On the request of applicants 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 M/s Ansar Chemicals, M/s Neeru Enterprise, M/s Narain Terpen & Allied Chemicals, and M/s Exotic Agro Exports Shri Vishnu Kapoor, Proprietor also attended the hearing in the case of M/s Neeru Enterprises.

They reiterated the grounds of revision application and stated that in their corresponding cases the show cause notices issued in different files (as stated above) alleging fraudulently availed cenvat credit from duty was paid on said exported goods, are still pending adjudication before common adjudicator CCE(Adj), Delhi. Shri D.D.Mangal, Assistant Commissioner, Moradabad and Shri Rohit Dwivedi, Assistant Commissioner, Hapur appeared for hearing on 21.2.2013 on behalf of respondent department who submitted that the orders-in-appeal being legal and proper may be upheld. They submitted that show cause notices issued to the applicants for recovery of wrongly availed cenvat credit are pending adjudication.

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 availment 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 different show cause notices (mentioned at para 4.8) issued by CCE Meerut-II for entire amount of Cenvat Credit involved/taken during the period in question, that enquiry in the matter conducted by Noida and J&K Commissioner did not reveal any such discrepancy. On the other hand, respondent 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.

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 exporters who are the applicants in these cases. Government observes that in these cases duty on exported goods was paid from cenvat credit and department after conducting investigations, has issued show cause notices for recovery of wrongly availed cenvat credit which are yet to be decided in the adjudication proceedings initiated vide various show cause notices dated 15.1.10, 5.01.10, 7.2.10 & 19.2.10 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 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:

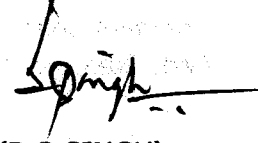
"Rule 18: Rebate of Duty: Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any,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

The provision of said rule stipulate that rebate of duty paid on 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 these cases, payment of duty is in dispute and case matter for recovery of wrongly availed Cenvat credit are pending adjudication. Applicant is a manufacturer exporter and duty is paid from cenvat credit which is under dispute. So said duty paid cannot be treated as duty paid validly unless the cenvat credit availed is held a valid cenvat credit. The contention of applicant that proceedings initiated for recovery of wrongly cenvat credit are independent of sanctioning rebate claim cannot be accepted since duty paid on exported goods can only be rebated under rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE (NT) dated 6.9.04. In view of this, it would be premature to decide the admissibility of rebate claims till the decision is taken by adjudicating authority in the various show cause notices dated 15.1.10, 5.01.10, 7.2.10 & 19.2.10 issued to all the applicants. 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 notices 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)

1. M/s Ansar Chemicals, Lodhi Sarai, Sambhal, Moradabad, (UP)
2. M/s Neeru Enterprises, 6 Salim Manzil, Civil, Lines, Distt. Rampur (UP)
3. M/s Narain Terpen & Allied Chemicals, Dhanaura, Distt. J.P.Nagar (UP)
4. M/s Exotic Agro Exports, Opp. Hotel Panchal (Rahi), Delhi Road, Moradabad (UP)

Attested
9/11/2020

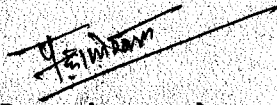
K. RAMESHWARAM
विशेष कार्य अधि./GSD-II (RA)
वित्त मंत्रालय. (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Order No. 234-284 /2013-Cx dated 20.03.2013

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. Assistant Commissioner, Customs & Central Excise Division, Hapur.
5. PA to JS(RA)
6. Guard File
7. Spare Copy.

ATTESTED



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