



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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F NO. 195/579/12-RA/634

Date of Issue: 26<sup>th</sup> December, 2017

ORDER NO. 23/2017-CX (WZ)/ASRA/Mumbai DATED 26<sup>TH</sup> DECEMBER 2017 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. Four Star Industries, Unit No.6 & 7, Om Anand Industrial Estate, Raghunath Nagar, Thane(W)-400604

Respondent : Commissioner of Central Excise (Appeals), Mumbai-III-400614.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. BC/387/Mum-III/2011-12 dated 28.03.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III, 5<sup>TH</sup> Floor, CGO Complex, CBD, Belapur, Navi Mumbai-400614



## ORDER

The instant revision application has been filed by M/s. Four Star Industries, Thane -400604 (hereinafter referred to as "the applicant") against the Order-in-Appeal No. BC/387/Mum-III/2011-12 dated 28.03.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai- III.

2. The case in brief is that the applicant had filed appeal against the Order in-Original No.63/R/11-12 dated 03.01.2012 and 68/R/11-12 dated 08.02.2012 passed by the Assistant Commissioner of Central Excise, Mulund Division, Mumbai-III vide which rebate claims were rejected on the grounds that two benefits viz rebate and drawback have been simultaneously availed by the appellant and the Department's appeal on the same issue was pending before Revisionary Authority, Govt. of India, New Delhi. .

3. The Commissioner of Central Excise (Appeals), Mumbai-III dismissed the appeal on the grounds that the applicant had filed a single appeal against two different Order-in Originals passed by the adjudicating authority and in terms of Section 35 of the Central Excise Act, 1944 read with Rule 3 of Central Excise (Appeals) Rules, 2001, an appeal had to be filed separately for each Order-In-Original whereas the applicant had filed one appeal against the two Order in Originals.

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 various grounds as enumerated in Appeal application.

5. A Personal hearing was held in this case on 20.12.2017 and Shri Niketan G. Dumal, Advocate duly authorized by the applicant appeared for hearing and reiterated the submission filed through Revision Application and also made additional submissions. He also filed case laws, (i) Escort Ltd v/s Commissioner of Central Excise, Faridabad reported at 2007 (207) E.L.T.



287 (Tri. -Del.) and (ii) Usan Pharamaceuticals Pvt. Ltd., reported at 2014 (311) E.L.T. 1013 (G.O.I). to support his case that substantive rights should not be denied on technical grounds. He pleaded for allowing the Revision Application. None appeared on behalf of respondent Department.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions made and has also perused the impugned Order-in-Original and Order-in-Appeal. Government observes that the applicant's appeal was dismissed by the Commissioner (Appeals) on the ground that they had filed a single appeal against two different Order-in Originals passed by the adjudicating authority.

7. In the case of Commissioner of C.EX., Thane-I Vs Armstrong World Industries (I) Pvt. Ltd. [reported in 2016(343)ELT. 493 (Tri-Mumbai)], the Revenue had filed one common appeal before the Commissioner of Customs(Appeals) against the four orders in original. Commissioner (Appeals) rejected the same vide order in Appeal No. YDB(256)Th.I/2011 dated 16-11-2011 on the ground that the common appeal filed under the single appeal is contrary to the provisions of law and cannot be decided and would not be maintainable under the provisions of the sub-section(4) of Section 35 E of the Central Excise Act, 1944 and directed the Revenue to file four separate appeals with respect to four Orders-in-Original to be appealed against. In compliance to this order, the Revenue filed 4 separate appeals before the Commissioner (Appeals). However, vide a common impugned order dated 30-4-2012 the Revenue's four appeals were dismissed by the Commissioner (Appeals) as not maintainable on the ground that there is no power vested to the Commissioner (Appeals) to review his own order. While setting aside the Order in Appeal, Hon'ble CESTAT observed that the Revenue had followed the direction of the Commissioner (Appeals) and filed four appeals before the Commissioner (Appeals) and these appeals were filed against Orders-in-Original only and not against the Commissioner (Appeals) order and therefore, Commissioner (Appeals) should have passed the order



on merit in respect of four appeals instead of dismissing on the ground, which is not flowing from the facts of the case. Accordingly, CESTAT set aside the Commissioner (Appeals) order and remanded the matter back to the Commissioner (Appeals) for deciding all the four appeals on merit.

8. Placing its reliance on the aforesaid judgement, Government is of the considered opinion that Commissioner (Appeals) in the present case while dismissing the impugned Appeal, should have directed the applicant to file two separate appeals with respect to two Orders in Original No.63/R/11-12 dated 03.01.2012 and 68/R/11-12 dated 08.02.2012 passed by the Assistant Commissioner of Central Excise, Mulund Division, Mumbai-III and on filing of different appeals by the applicant, the Commissioner (Appeals) should have passed the order on merit in respect of such two appeals.

9. In view of the aforesaid discussion, Government sets aside the impugned Order in (Appeal) and directs the applicant to file two separate appeals against two separate Orders in Original before Commissioner (Appeals) within four weeks from the date of receipt of this order. The Commissioner (Appeals) will decide these appeals on merits and also in accordance with law by giving reasonable opportunity of personal hearing to the applicant.

10. Revision application is being disposed of in above terms.

11. So, ordered.

*(Signature)*  
26.12.17

(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-officio  
Additional Secretary to Government of India

ORDER No. 23/2017-CX (WZ) /ASRA/Mumbai DATED 26.12.2017

**True Copy Attested**

To,  
M/s. Four Star Industries,  
Unit No.6 & 7, OmAnand Industrial Estate,  
Raghunath Nagar, Thane (W)-400604.

*(Signature)* 26/12

SANKARSAN MUNDA  
Asstt. Commissioner of Custom & C. Ex.



Copy to:

1. The Commissioner of GST & CX, Thane, Commissionerate.
2. The Commissioner, Central Excise, (Appeals) –Thane, 3<sup>rd</sup> Floor, GST Bhavan, BKC, Bandra (E), Mumbai-400051.
3. The Deputy / Assistant Commissioner, Mulund Division, GST & CX, Thane, Commissionerate
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.

*[Handwritten signature]*

