

**REGISTERED  
SPEED POST**



F.No. 195/186/12-RA & 371/32/DBK/12-RA  
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..... 23/5/14

ORDER NO. 246-247/14-Cx DATED 20.05.2014 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 orders-in-appeal mentioned in the table passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

Applicant : M/s Kora Amruta Exports, Goregaon (W), Mumbai.

Respondent : Commissioner of Central Excise, Mumbai Zone-II, Mumbai,

\*\*\*\*\*

**ORDER**

These revision applications are filed by M/s Kora Amruta Exports, Goregaon (W), Mumbai against the orders-in-appeal passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to orders-in-original passed by the original authority as detailed in table below:

TABLE

Sl.No	Revision Application No.	Order-in-appeal No. & Date	Order-in-original No. & Date
(1)	(2)	(3)	(4)
1.	195/186/12-RA	No.US/483/RGD/2011 dated 22.12.11	1599/2010-11/AC(Rebate) (Raigad) dated 17.1.2011 passed by the Dy. Commissioner of Central Excise, Raigad
2.	371/32/DBK/12-RA	No.US/465/RGD/2012 dated 3.8.12	Raigad/ADC/1174/11-12 dated 8.1.2012

2. Brief facts of the cases are that the applicants filed rebate claim of Rs.226671/- which was sanctioned by the Deputy Commissioner of Central Excise vide order-in-original dated 17.1.2011 mentioned at Sr.No.(1) of table above. The department filed appeal against said order-in-original dated 17.1.2011 before Commissioner (Appeals) on following grounds:

- i) The assessable value in ARE-1 No.34 dated 21.2.2008 was Rs.944993/- whereas the FOB value shown in the corresponding shipping bill No.6047908 was only Rs.56971/-. Therefore, the rebate claim was required to be restricted only to the extent of duty payable on the FOB value.
- ii) The respondents had declared on the ARE-1s that they were availing facility under Notification No.21/2004-CE(NT) dated 6.9.2004 and Notification No.43/2001-CE(NT) dated 26.6.2001.

Therefore, as per the said notifications, the goods were required to be exported under bond.

The Commissioner (Appeals) vide order dated 22.12.2011 as mentioned at Sr.No.(1) of table above, allowed the department's appeal. In the meanwhile, a protective show cause notice dated 4.11.2011 was issued for recovery of erroneously sanctioned rebate claim of Rs.226671/-. Pursuant to said order-in-appeal dated 22.12.2011, the Addl. Commissioner of Central Excise, Raigad vide order-in-original dated 30.1.2012, confirmed the demand of already sanctioned rebate claim. The applicant filed appeal before Commissioner (Appeals) who vide order-in-appeal dated 3.8.2012 as mentioned at Sr.No.(2) of table above, rejected the same.

3. The applicants has filed these two revision applications against said two orders-in-appeal dated 22.12.2011 and 3.8.2012 on following common grounds:

3.1 The CCE(A) further erred in allowing the revenue appeal on the ground that the applicant have not submitted an amended copy of Shipping Bill and invoice in respect of S/B 6047908 in which the FOB value is shown at Rs.56,971/- whereas value in the ARE-1 No. 34 dt 21/02/2008 was Rs.9,44,993/-. In this regard, the applicant submit that the Invoice and ARE-1 were showing the amount as Rs.9,44,993/- and through oversight the amount was shown in Shipping Bill at Rs.56,971/-. This clarification was given to the Rebate sanctioning authority at the time of filing the rebate application and also to the deficiency memo. On due verification of the records with Bank Realization Certificate produced, the rebate is sanctioned as appearing in the order in original.

3.2 With regard to the Notification No.43/2001 CE(NT) dated 26/06/2001 and 21/2004 CE (NT) dated 06.06.2004 mentioned in the ARE-1. The Additional Commissioner of Central Excise further erred in demanding the refund amount

on the ground that the appellants have availed the facility of Notification No.43/2001 CE(NT) dated 26/06/2001 and 21/2004 CE (NT) dated 06.06.2004 mentioned in the ARE-1. In this, the appellants submit that the ARE-1 is having printed format in which the certification is mentioned in the bottom that if the exporter availed the facility, then they have to mark the same. It is relevant to mention here that the appellants have not highlighted not marked the availment of Notification No.43/2001 CE(NT) dated 26/06/2001 and 21/2004 CE (NT) dated 06.06.2004. Hence, it is incorrect to deny the rebate or demand the sanctioned refund back on this ground.

3.3 There are number of judgments, wherein it has been clearly held that the procedural lapse cannot be a ground for denial of Rebate once the export is proved. In support, the applicants rely on the following decisions:

- 2011 (271) ELT 449 (GOI)- Garg Tex-O-Fab Pvt. Ltd.
- 2003 (158) ELT 797 (GOI)- Akansha Metals P Ltd.
- 2001 (131) ELT 726 (GOI)- Krishna Filaments

4. Personal hearing was scheduled in these cases on 21.12.12 & 11.4.2014. Hearing held on 11.4.14 was attended by Shri C.S.Biradar, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of respondent department.

5. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal.

6. Government observes that the applicant's rebate claim of Rs.226671/- was initially sanctioned by the Dy. Commissioner (Rebate), Raigad vide order-in-original dated 17.1.2011. The department preferred appeal against rebate sanctioning order dated 17.1.2011 before Commissioner (Appeals), who vide order-in-appeal dated 22.12.2011 set aside the said order-in-original dated

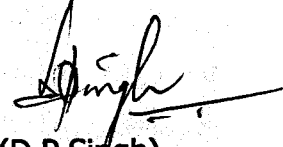
17.1.2011 and allowed department's appeal. Consequently, Addl. Commissioner of Central excise vide order-in-original dated 30.1.2012 confirmed the demand of erroneously sanctioned rebate of Rs.226671/-. The applicants filed appeal before Commissioner (Appeals), who vide order-in-appeal dated 3.8.2012, rejected the same. Now, the applicant has filed these two revision applications against above mentioned two orders-in-appeal dated 22.12.2011 and dated 3.8.2012 on the grounds stated above.

7. Government finds that the applicant department challenged the rebate sanction order of original authority before Commissioner (Appeals) on the ground that there were discrepancies in FOB value mentioned in shipping bill and ARE-1. The applicant contended that this discrepancy is due to typographical error and that they made application for amendment through their CHA, however, the CHA has not given amended copy of shipping bill. The similar plea was taken before Commissioner (Appeals) also. The position remained same even after/at the time of hearing on 11.4.14. Applicant has not submitted any documentary evidence in support of their claim that any such request for amendment of shipping bill is still pending. It is quite clear from the available records that no amendment is carried on the shipping bill even after lapse of six years. Case cannot be kept pending and has to be decided on the basis of available records.

8. Government therefore is of the view that in the absence of any amendment in the shipping bill the value as declared in the shipping bill cannot be changed. As such, Government finds no legal infirmity in the impugned orders and upholds the same.

9. The revision applications are thus rejected being devoid of merits.

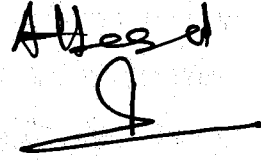
10. So, ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Kora Amruta Exports  
45, Paras Vijay Opp: Sahara India  
Goregaon (W), Mumbai-400062.



(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt. of India  
नई दिल्ली/New Delhi

Order No. 246-247/2014-Cx dated 20.05.2014

Copy to:

1. Commissioner of Central Excise, Raigad Commissionerate, Plot No. 1, Kendriya Utpad Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai-410614.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra(E), Mumbai-400 051.
3. The Assistant Commissioner of Central Excise (Rebate), Raigad Commissionerate, Ground Floor, Kendriya Utpad Shulk Bhavan, Plot No. 1, Sector-17, Khandeshwar, New Panvel, Navi Mumbai-410206.
4. ✓ PA to JS(RA)
5. Guard File.
6. Spare copy

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)