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F.No.198/656/11-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 25/2/14

ORDER NO. 28/2014-CX DATED 20.02.2014 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 Section35 EE of the Central Excise Act, 1944 against the Order-In-Appeal No15/2011(M-I) dated 25.8.2011 passed by the Commissioner (Appeals) Central Excise, Chennai-I
Applicant	:	Commissioner of Central Excise, Chennai-I Commissionerate,
Respondent	:	M/s Carborundum Universal Ltd. (Prodirie Division), Mungeleri Village, Vinnampalli Post, Katpadi Taluk, Velore Distt.

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ORDER

This revision application is filed by the Commissioner of Central Excise Chennai-I Commissionerate against the order-in-appeal No. 15/2011(M-I) dated 25.8.2011 passed by the Commissioner (Appeals) Central Excise, Chennai with respect to order-in-original dated 28.1.09 passed by the Maritime Commissioner of Central Excise, Chennai-I Commissionerate.

2. Brief facts of the case are that the that M/s Prodorite Anti Corrosives Ltd, by a court order amalgamated with M/s Carborundum Universal Limited are presently functioning as one of the divisions of the respondent. M/s Prodorite Anti Corrosives Ltd had filed a rebate claim for Rs.41,698/- on the goods viz.3150 kgs of "Styrene Monomer" cleared from their premises at Chennai under ARE-1 No.26/21.11.07 and exported via Chennai Port. The said goods had not been manufactured by the respondent but procured from a registered dealer M/s Karnataka Chemical Industries, Bangalore who originally imported 50000 kgs of "Styrene Monomer" on payment of applicable duties of Customs which includes CVD, Cesses and SAD and sold 3150 kgs to the respondents.

2.1 As it appeared that the assessee's rebate claim was not admissible since as per Rule 18 of the Central Excise Rules, 2002 as goods have not suffered Excise duty. A show cause notice was issued by the Maritime Commissioner of Central Excise, Chennai proposing to reject the rebate claim amounting to Rs.41,698/-. After due process of law, the Lower Adjudicating Authority passed the impugned Order-in-Original rejecting the claim.

3. Being aggrieved by the said order-in-original, respondent filed appeal before Commissioner (Appeals) who decided the case in favour of respondent.

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

4.1 The assessee is not eligible to claim rebate of CVD paid on goods at the time of export in as much as the Notification No.19/2004-CE(NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules, 2002 vide explanation 1 to the said notification lays down that CVD paid on goods imported cannot be termed as duty of excise collected under any of the enactments. It is apparent that for the goods to be termed as 'excisable goods' it should be specified in the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 as being subject to duty of excise and a duty of excise is leviable on the same. Duty of excise is leviable only on the goods which are produced or manufactured in India.

4.2 The case law viz., CCE, Gurgaon Vs Simplex Pharma (P) Ltd [2008(229) ELT 504(P&H)], quoted by Commissioner (Appeals) has no relevance to the issue in hand. The said case has a different factual position to that of the present case. In the said case law, the party had filed refund claim of duty in the form of CVD paid on inputs imported, which were further used in the manufacture of final products. They got their final products manufactured by a loan licencee and the goods thus manufactured were exported and no Modvat/Cenvat credit was availed by them on the raw material. Since CVD was paid by them on excisable material used in the manufacture of goods, which were exported out of India and since the incidence of payment of duty was not passed on to any other person, they claimed for refund of duty. The High Court of P&H had held that the party is entitled to payment/refund of such amount under Section 11 B(2) of the Act.

4.3 In the issue in hand, the assessee had not imported the goods in question but a dealer viz. M/s Karnataka Chemical Industries, Bangalore had imported and passed on proportionate credit of Customs duty paid on goods imported. The assessee had exported the goods as such without undertaking any manufacturing activity and claimed rebate of customs duty suffered.

4.4. The case law quoted by the Commissioner (Appeals) viz., Hyderabad Industries Ltd Vs UOI [1999(108) ELT 321(SC)], wherein Hon'ble Supreme Court had observed that Section 3(1) of Customs Tariff Act specifically mandates that the CVD will be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and manufacturer of final product is entitled to Cenvat credit of this Additional duty leviable under Section 3 of Customs Tariff Act paid on any inputs received in the factory and that the Bill of Entry is a legal document for Cenvat Credit purposes under Rule 7(1) (c) of Cenvat Credit Rules. The case law actually talks about the levy of Additional duty of Customs (Counterveiling Duty) on goods that are imported, which is equal to the Excise duty for the time being leviable on the like articles, if produced or manufactured in India, the same will be available for Cenvat credit to the manufacturer in India. Nowhere, the case law talks about CVD paid on imported goods are eligible for Rebate.

4.5 A harmonious reading of Rule 18 of Central Excise Rules 2002 and Section 2(d) of the Central Excise Act, 1944 indicates that for a claimant to be eligible for rebate of duty paid on any goods exported, firstly they should be excisable goods and duty of excise should be paid on the same. In the instant case, the goods have not suffered any duty excise as the same were not manufactured in India but imported into India.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act 1944 to file their counter reply. However, no reply received from the respondent.

6. Personal hearing was scheduled in this case on 14.12.2012, 22.2.2013 and 17.2.14. Hearing held on 14.12.12 was attended by Shir W.V.Jacob on behalf of the applicant department and reiterated the grounds of revision application. Nobody attended hearing on behalf of respondent party on the above said dates.

7. Government has considered the relevant case records and perused the impugned order-in-original and order-in-appeal.

8. The original authority rejected the rebate claim on the ground that imported goods have been exported 'as such' without undertaking any manufacturing process and such exported goods cannot be treated as export of 'excisable goods' and no excise duty was paid and CVD paid on imported goods cannot be rebated. Commissioner (Appeals) decided the case in favour of respondent. Now the applicant department has filed this revision application on the grounds stated in para (4) above.

9. Government notes that the goods in question "Styrene Monomer" exported vide ARE-1 No.26/21.11.07 was not manufactured by the respondent party but the same had been procured from M/s Karnataka Chemicals Industries, Bangalore, a registered dealer who imported the said goods. These goods are not inputs/raw material for the goods manufactured in the factory of respondent. So it is neither a case of export of excisable goods manufactured by respondent nor a case of clearance of inputs as such for export on reversal of equal cenvat credit under rule 3(5) of Cenvat Credit Rules 2004. Since the excisable goods are not exported on payment of duty the rebate claim was rightly held

inadmissible by the original authority. The case law cited by Commissioner (Appeals) are not applicable in this case as facts of present case are altogether different. Commissioner (Appeals) has cited GOI Revision order in the case of Om Sons Cookware P Ltd. reported in 2011 (268) ELT111(GOI). In the said case issue involved pertained to rebate claim of CVD paid on inputs used in exported goods whereas in the present case the goods exported are not inputs used in the manufacturing of exported goods. In this case the imported goods have been re-exported. So there is no applicability of said GOI Revision Order to the instant case. As such Commissioner (Appeals) has erred in allowing rebate in this case.

10. In view of above position, Government sets aside the impugned order-in-appeal and restore the impugned order-in-original.

11. Revision application thus succeeds in terms of above.

12. So, ordered.

(D P Singh)
Joint Secretary (Revision Application)

Commissioner of Central Excise
Chennai-I Commissionerate
Mahatma Gandhi Road
Nungambakkam, Chennai-600034

(भागवत शर्मा/Bhsgwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-DSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

ORDER NO. 28 /2014-CX DATED 20.02.2014

Copy to:

1. M/s Carborundum Universal Ltd. (Prodirie Division), Mungeleri Village, Vinnampalli Post, Katpadi Taluk, Velore Distt.

2. Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Chennai-600034

3. The Maritime Commissioner of Central Excise, Chennai-I Commissionerate. 26/1, Mahatma Gandhi Salai, Nungambakkam, Chennai-600034

4. PS to JS(RA)

5. Guard File.

6. Spare Copy

ATTESTED

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