

**REGISTERED  
SPEED POST**



**F.No. 198/69/11-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 25/3/13

Order No. 288 /13-cx dated 25-3-2013 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 35 EE of the Central Excise, 1944 against the Order-in-Appeal No. PKS/357/BEL/10 dated 19-10-2010 passed by Commissioner of Central Excise, (Appeals), Thane.

Applicant : The Commissioner of Central Excise, Commissionarate, Thane-II.

Respondent : M/s. P.D Impex, Mumbai.

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**ORDER**

This revision application is filed by The Commissioner of Central Excise, Commissionerate, Thane-II against the Order-in-Appeal No. PKS/357/BEL/10 dated 19-10-2010, passed by Commissioner of Central Excise (Appeals), Mumbai-II with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Bhandup - Division. M/s. P.D. Impex, Mumbai is the respondent in this case.

2. M/s. P.D. Impex, Mumbai had filed 3 rebate claims in respect of goods cleared for export. The said rebate claims were earlier rejected by the Assistant Commissioner, Bhandup Division vide Order-in-Original Nos. (i) 226/05-06 dated 31-1-06, (ii) 227/05-06 dated 31-1-06 and (iii) 253/05-06 dated 21-2-06 respectively, on the ground that M/s. Radha Dyeing & Printing Mills (RDPM), the job worker of the impugned goods had taken CENVAT credit on fake invoices issued by fake firms. The goods pertaining to the rebate claim were processed by M/s. RDPM, Bhandup who had shown the payment of duty on the export goods vide debit entry in their Cenvat credit account out of credit earned against the said fake invoices.

2.1 Being aggrieved by the above order, the party filed appeals before the Commissioner (Appeals), Mumbai, Zone-II. Commissioner (Appeal) vide his Order-in-Appeal No. AT/848-850/M.III/06 dated 12-2-07 set aside the above three Orders-in-Original and allowed, the appeals filed by the consequential relief.

2.3. Subsequently, the department preferred Revision applications No. 198/45 to 47/07-RA-Cx against the above referred Order-in-Appeal No. AT/848-850/M.III/06 dated 12-2-07 before the Government of India. The Joint Secretary, (Revision Application) vide Revision Order No. 257-259/09-CX dated 25-8-09 upheld the impugned Orders-in-Appeal passed by Commissioner (Appeals) and rejected the departmental revision applications. The Assistant Commissioner of Central Excise, Bhandup sanctioned the rebate claims

amounting to Rs. 2,74,007/- in pursuance to Order-in-Appeal AT/848-850/M-III/06 dt. 12-02-2007 vide Order-in-Original No. 22/R/09-10 dt. 04-12-2009. Department reviewed the said Order-in-Original and filed appeal before Commissioner (Appeals) on the ground that Writ Petition being filed in High Court of Bombay against GOI Revision Order No. 257-259/09-Cx dt. 25-08-2009.

3. The Commissioner (Appeals) vide impugned Order-in-Appeal dt. 19-10-2010 has held that the only ground on which the appeal filed by the Revenue is that Writ Petition is being filed in the Hon'ble High Court of Bombay against GOI Order NO. 257-259/09-Cx dt. 25-08-2009. But, merely because the department is contemplating filing of the appeal against the order of Revisionary Authority, cannot form the basis for entertaining the appeal; and in view of same the impugned Orders-in-Original was upheld and appeal of the department was dismissed by the Commissioner (Appeals).

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

4.1. In the instant case, a writ petition was filed by the Department before the Hon'ble High Court along with Stay Application against Revision Order No. 257-259/09-CX dated 25-8-09 on the strength of which they said three rebate claims have been sanctioned by the jurisdictional Assistant Commissioner. The same was disposed off under Rule 1986 of the Bombay High Court Rules, 1980 due to non removal of objections. Panel Counsel has been requested by this office to take immediate steps for revival of the case.

4.2. The said Writ Petition is being filed on the ground that M/s. P.D. Impex had claimed rebate on the duty purportedly paid by M/s. RPDM which had been initially availed by them as Cenvat credit on the fake/bogus invoices obtained by fraud. Fraud vitiates everything consequently. As such, M/s.

P.D. Impex is not at all entitled for the rebate claimed by them, as the fact remains that rebate has to be allowed on the duties paid. The payment of duty should be real so that the revenue reaches the Government's treasury. However, in the instant case only an illusion of duty payment was created and nothing was actually paid. It has to be reiterated that the department is not obliged to grant rebate on an amount which was never received. The rules at the prevalent time never stipulated that an exporter can avail cenvat credit on fraudulent invoices. The exporters being the beneficiary of the rebate, the onus lies on them to prove that duty had been paid on the exported goods and they had to deal with bona fide manufacturers. M/s. P.D. Impex had to make necessary enquiry and find out the genuineness of the initial cenvat credit avilment and subsequent duty payment made by M/s. RPDM.

4.3 The Commissioner (Appeals) held that the only ground on which the appeal filed by the Revenue is that Writ Petition is being filed in the High Court of Bombay which is not correct. As the matter is regarding admissibility of the rebate claim which is being contested by the Department before Hon'ble High Court, the claim has to be deemed to be pre-mature and not due to the claimant viz. M/s. P.D. Impex.

5. A Show Cause Notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. The respondent vide their written reply submitted during the course of personal hearing on 12-10-2012 has mainly stated as under:

5.1. The dispute is regarding the rebate on the goods exported viz. Manmade fabrics (under AR-E-I). This Revision Application is filed for the second time by the Revenue on the same Rebate claim which infect stands already decided by GOI Order No.257-259-09/CX. dated 25.08.2009.

5.2 As the rebate claims were not paid the Respondents herein after lot of persuasions and complying with all the necessary requirements / procedure as were being directed by the office of the Assistant Commissioner, Bhandup Division, Mumbai, rebate claims were sanctioned and paid only after more than 3 years from the date of exports and after almost two years from the order of Commissioner (Appeal) without any interest inspite the fact that the delay was on the part of the revenue only.

6. Personal hearing scheduled in this case on 28-06-2012, 12-10-2012 & 04-03-2013. Hearing held on 12-10-2012 was attended by Shri Satish Goenka, Proprietor on behalf of the respondent and reiterated their submissions made during course of personal hearing. Nobody attended hearing on behalf of applicant department.

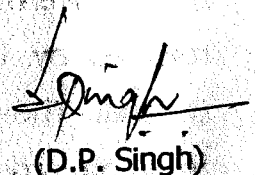
7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that respondent's rebate claims were initially rejected by the jurisdictional Assistant Commissioner vide there Orders-in-Original. The respondent filed appeals before Commissioner (Appeals) against rejection order of rebate claims, which were decided by the Commissioner (Appeals) vide Orders-in-Appeal No. 848 to 850/M-III/06 dt. 12-02-2007 in favour of respondents. The applicant department filed Revision Application No. 198/45-47/RA-Cx against said Order-in-Appeal dated 12-02-2007 before Joint Secretary (RA), who vide revision Order No. 257-259/09-Cx dt. 25-08-2009 upheld the said Order-in-Appeal. The original authority thereafter sanctioned the rebate claims of the applicant. The applicant department again filed appeal in 2<sup>nd</sup> round against Order of original authority before Commissioner (Appeals) mainly, on the ground that the said GOI order was being challenged before Hon'ble Bombay High Court. However, Commissioner (Appeals) rejected the said appeal of department. Now, the applicant department has filed this revision application on grounds mentioned in para (4) above.

9. Government observes that the department in this second round of revisionary proceedings, is mainly contesting that they are filing Writ Petition against GOI Order dt. 25-08-2009. This office vide letter F.No. 198/69/2004-RA-Cx dt. 22-10-2012 specifically asked department to state the present status of the said Writ Petition. The department vide letter F.No. V(PKS/357) Trb Cell-246/10/AP/M-III dt. 11-12-2012 stated the Writ Petition is at 'Pre-admission stage'. As such, the said GOI Order dated 25-08-2009 is neither set aside nor stayed by the Hon'ble Bombay High Court. Under such legal scenario the principle of judicial discipline demands that the order of higher authority is to be strictly implemented by the lower Authorities. Hon'ble Supreme Court has held in the case of UOI Vs. Kamalakshi Finance Corporation Ltd. 1991 (55) ELT 433 (SC), that orders of higher appellate authorities should be unreservedly followed by subordinate authorities unless operation of same has been stayed by competent court. Hence, Government finds no infirmity in the impugned Order-in-Appeal and therefore upholds the same.

10. Revision Application is thus rejected being devoid of merits.

11. So, Ordered.




(D.P. Singh)

Joint Secretary to the Government of India

The Commissioner of Central Excise,  
Mumbai-III, 4<sup>th</sup> Floor, Vardaan Sankul,  
MIDC, Wagle Industrial Estate, Thane (West)- 400604.

ATTESTED

  
(श्रीश्री शर्मा/Shree Shree Sharma)  
उपसहायक आसपास/Assistant Commissioner  
C.B.E.C-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt of India  
नई दिल्ली / New Delhi

Order No. 288/13-Cx dated 25-3-2013

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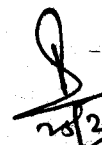
1. The Commissioner of Central Excise (Appeals), Mumbai- III, Mumbai Zone-II, 5<sup>th</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
2. The Assistant Commissioner of Central Excise, Bhandup Division, Mumbai-III, 1<sup>st</sup> Floor, Hira Moti Complex, Shivaji Nagar, Thane (West)- 400604.
3. M/s. P.D Impex, 201/5-C, Mittal Industrial Estate, 1<sup>st</sup> Floor, Andheri Kurla Road, Mumbai-59.
4. Shri Satish Goenka, Proprietor c/o. M/s. P.D Impex, 201/5-C, Mittal Industrial Estate, 1<sup>st</sup> Floor, Andheri Kurla Road, Mumbai-59.

✓ 5. PS to JS (RA)

6. Guard File.

7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY

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101

102

103

104