



**REGISTERED  
SPEED POST**

**F.No. 195/252/11-RA-CX  
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. 289 /13-Cx dated 25.03.2013 of the Government of India, passed by Shri D. P. Singh, Joint Secretary to the Government of India, Under Secretary 35 EE of the Central Excise Act, 1944.

**Subject** : Revision Application filed under section 35 EE of the Central Excise Act., 1944 against the Order-in-Appeal No. 05/2011-C.E. dated 17.01.2011 passed by the Commissioner of Central Excise (Appeals) Coimbatore.

**Applicant** : M/s Amex Alloys Private Ltd., Coimbatore.

**Respondent** : The Commissioner of Customs & Central Excise, Coimbatore

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ORDER

This Revision Application is filed by M/s Amex Alloys Private Ltd., Coimbatore against the Order-in-Appeal No. 05/2011-C.E. dated 17.01.2011 passed by the Commissioner of Central Excise (Appeals) Coimbatore with respect of Order-in-Original passed by the Deputy Commissioner of Central Excise Division-Tirupur.

2. Brief facts of the case are that applicant Amex Alloys Private Ltd., Coimbatore have filed a rebate claim for an amount of Rs. 4,31,840/- being the amount of duty paid on Non Alloy steel/Stainless steel/Machined casting falling under heading No. 7325.99.20 of CETA 1985 manufactured and cleared from their factory for export under claim for rebate of duty. After due process, the lower authority had sanctioned the rebate of duty of Rs.4,31,840/- but appropriated the same against the pending demand and penalty which was confirmed vide order in original C.No.V/73/15/03/2009-Adj (Sl. No.01/2010) passed by the Deputy Commissioner of Central Excise, Tirupur Division under section 11 of Central Excise Act, 1944 vide the impugned order dated 05.05.2010.

3. Being aggrieved by the said Order-in-Original, the applicant filed appeals before Commissioner (Appeal), who rejected the same.

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

4.1 There are two separate proceedings. (a) The first one is about ineligible Cenvat Credit. An order has been passed against the applicants for

recovery of Rs. 4,06,131/- as duty and Rs. 4,06,131/- as penalty vide order in original V/73/15/03/2009-Adj dated 21.01.2010. The same was also upheld by the Commissioner (Appeals) vide Order-in-Appeal 107-109/2010-CE dated 28.09.2010. Against the same, appeal along with stay has been preferred and it is pending before CESTAT. (b) The second one is the rebate claim. Rebate of Rs. 4,31,840/- was sanctioned vide Order-in-Original V/73/18/41/2010-RB dated 05.05.2010. But the adjudicating had adjusted the sanctioned rebate amount towards the demand.

4.2 It is submitted that, the issue has not attained as the same is pending before Hon'ble Tribunal, therefore, no action can be taken under Section 11 of the Central Excise Act, 1944 at this stage. The issue is similar to the issue dealt in the case of M/s National Steel Industries Ltd. Vs. UOI, reported in 2001(134) ELT 616-MP.

5. Personal hearing scheduled in this case on 13.12.2012 & 22.02.2013. Nobody attended the hearing. Hence, Government proceeds to decide the case on merits on the basis of available records.

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

7. Government observes that the applicants was sanctioned rebate claim of Rs. 4,31,840/- on merits, however, amount of such sanctioned rebate claims was adjusted towards and penalty confirmed vide Order-in-Original C.No.V/73/15/03/2009-Adj (Sl. No. 01/2010) dated 21.01.2010. Commissioner (Appeals) rejected the appeal filed by the applicant. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that there is no dispute regarding merit of rebate claim of the applicant and the same was accordingly sanctioned to them by the

original authority. However, the original authority adjusted such sanctioned amounts towards confirmed demand and penalty arising out of Order-in-Original C.No. V/73/15/03/2009-Adj (Si. No. 01/2010) dated 21.01.2010 in exercise of powers provided under section 11 of the Central Excise Act, 1944.

8.1 Government finds that provisions contained in said section 11 of the Central Excise Act, 1944 read as follows:-

*"In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder including the amount required to be paid to the credit of the Central Government under Section 11D, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered, he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.*

*Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change."*

From perusal of above said provisions, Government finds that it is unambiguously, stated that proper authority may deduct/recover the amount/sum payable to Government by a person from any amount owing to the person from who such sum may be recoverable. In this case also, the rebate claim was sanctioned on merit to the applicant, however, the same was rightly adjusted/appropriated towards due recovery from applicant in exercise of power conferred to the proper officer under provision contained in section 11 of the

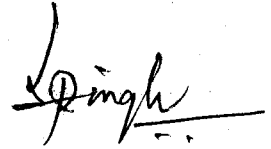
Central Excise Act, 1944 as there was no stay from such recovery from the higher appellate authority. .

82. Government observes that the appellate authority has discussed in detail all the contention raised by the applicant by citing various case laws. The Commissioner (Appeals) has also differentiated the ratio of judgement in the case of M/s National Steel Industries Ltd. Vs. UOI reported in 2001(134) ELT 616-MP, relied upon by the applicant. Government concurs with such reasoned findings of Commissioner (Appeals). Further, the Order-in-Original C.No. V/73/15/03/2009-Adj (Si. No. 01/2010) dated 21.01.2010 confirming demand of duty and imposing penalty upon applicant has not reported to be set aside or stayed by the higher legal forum and hence, the said Order-in-Original dated 21.01.2010 is still operational.

9. In view of above discussion, Government donot find infirmity in order of Commissioner (Appeals) and hence, upholds the same.

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

11. So, ordered.



(D.P. Singh)

(Joint Secretary to the Government of India)

M/s Amex Alloys Private Ltd.,  
SF.No. 289, Kunnathur Pudur (PO),  
Sathy Road, Coimbatore- 641107.

(Attested)



(Bhisgwer Sharma/Bhisgwer Sharma)  
सहायक आयुक्त/Assistant Commissioner  
G.I.E.C.-O.S.D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
राज्य सरकार/Govt. of India

Order No. 289 /13-Cx dated 25-03-2013

Copy to:-

1. The Commissioner of Central Excise , 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641018.
2. The Commissioner of Central Excise (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore – 641018.
3. The Deputy Commissioner of Central Excise, Tirupur Division, Tirupur
4. PS to JS(Revision Application)
5. Guard File
6. Spare Copy.



(Bhagwat P. Sharma)  
OSD (Revision Application)