

REGISTERED SPEED POST



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, Cuff Parade,  
Mumbai- 400 005

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F. NO. - 195/1401-1443/12-RA / 5649      Date of Issue: 11/12/19

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ORDER NO. <sup>298-340</sup> /2019-CEX (WZ) /ASRA/MUMBAI DATED 10.12.2019 OF  
THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL  
COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE  
GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE  
ACT, 1944.

Applicant : M/s. Indorama Synthetics (I) Ltd., Nagpur.

Respondent : Commissioner of Central Excise, Nagpur.

Subject : Revision Application filed, under Section 35EE of the Central  
~~Excise Act, 1944~~ against the Order-in-Appeal No. PVR/27 to  
70/NGP/2012 dated 29.08.2012 passed by the Commissioner  
(Appeals) Central Excise & Customs Nagpur.

## ORDER

These Revision Applications have been filed by M/s. Indorama Synthetics (I) Ltd., Nagpur (hereinafter referred to as the "applicant") against Orders-in-Appeal No. PVR/27 to 70/NGP/2012 dated 29.08.2012 passed by the Commissioner (Appeals), Central Excise & Customs Nagpur.

2. The brief facts of the case are that the applicant had filed 43 rebate claims before Assistant Commissioner, Central Excise and Customs, Division-II Nagpur (Original authority). After sanctioning the said amounts of rebate, the Original authority appropriated the sanctioned amount of rebate against applicant's outstanding dues of Rs.15,79,26,612/- (Rupees Fifteen Crore Seventy Nine Lakh Twenty Six Thousand Six Hundred Twelve only) arising out of Order in Original No. 23/DC/Cus/ICD/2010 dated 25.10.2010 passed by the Deputy Commissioner, Customs, ICD, Ajni, Nagpur wherein the applicant was held to be eligible to the lower rate of drawback @ 3% and erroneously granted excess drawback of Rs. 15,79,26,612/- was confirmed as liable to be recovered under the provisions of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995.

3. Being aggrieved by the Order in Original No. 23/DC/Cus/ICD/2010 dated 25.10.2010 passed by the Deputy Commissioner, Customs, ICD, Ajni, Nagpur, the applicants preferred appeal with the Commissioner (Appeals) with a stay application for complete waiver of the amount of pre-deposit. The Commissioner (Appeals) initially passed the interim order No. SR/STAY/08/NGP/2011, dated 17-2-2011 for the pre-deposit of 100% of amount under confirmed demand i.e. Rs. 15,79,26,692/- with interest. As the applicant failed to make the required pre-deposit, the Commissioner (Appeals) vide Order-in-appeal No. SR/301/NGP/2010, dated 28-3-2011 rejected the appeal on the ground of non-compliance of the stay order dated 17-2-2011.

4. Being aggrieved, the applicant filed a revision application against the Order-in-appeal No. SR/301/NGP/2010, dated 28-3-2011 before this authority and simultaneously filed Writ Petition No. 2956/2011 before the Hon'ble High Court of Bombay, Nagpur Bench praying to quash and set aside the action taken by the department in adjusting the amounts sanctioned as Rebate towards the confirmed demand of Rs. 15,79,26,692/-.

5. High Court Of Judicature At Bombay, Nagpur Bench, Nagpur vide its Order dated 04.07.2011 in Writ Petition No. 2956/2011 directed this authority to decide the application for stay, filed by the applicant, on or before 25/7/2011 and further ordered that till the said application is decided, the respondents should not make any coercive recovery of the amount involved in the case.

6. Being aggrieved by the Orders in Original of the Original authority to the extent of appropriation of the rebate amounts (referred to at para 2 supra) the applicant filed the appeals before Commissioner (Appeals) Central Excise & Customs, Nagpur.

7. Commissioner (Appeals) vide Orders-in-Appeal No. PVR/27 to 70/NGP/2012 dated-29.08.2012 (impugned Orders) rejected the appeals filed by the applicant by observing that the department had not made recovery of any outstanding dues after the issue of the Hon'ble High Court Order and there was no restraining order from any authority prohibiting the department from making such recoveries during the period when the said orders of appropriation were passed and as such the appropriation of the rebates sanctioned under the said Orders in Original under the provisions of Section 11 A of the Central Excise Act, 1944 was perfectly in order.

8. Being aggrieved by the impugned Orders, the applicant has filed the present Revision Applications mainly on the grounds that

8.1 the adjustment of rebate amount sanctioned against the demand of drawback alleged to have been erroneously sanctioned is not permissible in law;

8.2 in the present case the Assistant Commissioner had appropriated the rebate claims against duty demand arising out of another case in respect of which Revision Application along with stay application is pending before the Joint Secretary (Revision Application) Government of India; therefore such action of adjustment of rebate claim is arbitrary and is liable to be set aside;

8.3 no recovery proceedings can be initiated till the Revision application along with stay application are disposed off by the Joint Secretary, Government of India and that there is no time limit specified in Section 129 DD of the Customs Act, 1962 for the Joint Secretary, Government of India, Revision Application Unit to dispose the stay application.

9. Personal hearing was scheduled in this case on 19.12.2017, 08.02.2018 and 19.08.2019, however neither the applicant nor its Advocate on record appeared for the personal hearing. Further, there was no correspondence from the applicant seeking adjournment of hearing again. Hence Government proceeds to decide the case on merits on the basis of available records.

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

11. Government observes that the applicant vide present Revision Applications prayed for setting aside Orders-in-Appeal No. PVR/27 to 70/NGP/2012 dated 29.08.2012 which had upheld 43 Orders in original adjusting the amounts sanctioned as Rebate towards the confirmed demand of Rs. 15,79,26,692/- arising out of Order in Original No. 23/DC/Cus/ICD/2010 dated 25.10.2010 passed by the Deputy Commissioner, Customs, ICD, Ajni, Nagpur.

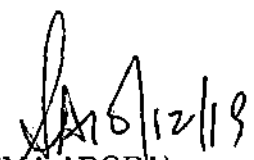
12. Government notes that the applicant had also filed Revision Application ~~No. 371/61/DBK/2012-RA~~ against Order-in-appeal No. PVR/26/NGP/2012, dated 28-8-2012 passed by the Commissioner (Appeals), Central Excise & Customs, Nagpur with reference to Order-in-Original No. 23/DC/Cus/ICD/2010, dated 25-10-2010 passed by Deputy Commissioner of Customs, ICD Ajni, Nagpur. GOI vide its Order No. 151/2013-Cus, dated 6-6-2013 [2014 (314) E.L.T. 1006 (G.O.I.)] allowed the Revision Application No. 371/61/DBK/2012-RA filed by the applicant, observing that the applicant is entitled for drawback claims at higher rate @ 16% of FOB value of exports and therefore the initial sanction of drawback claim @ 16% is legal & proper. Thus GOI vide its Order No. 151/2013-Cus, dated 6-6-2013 set aside Order-in-appeal No. PVR/26/NGP/2012, dated 28-8-2012 passed by the Commissioner (Appeals), Central Excise & Customs, Nagpur which had upheld Order-in-Original No. 23/DC/Cus/ICD/2010, dated 25-10-2010 confirming the erroneously granted

excess drawback of Rs. 15,79,26,612/- under the provisions of Rule 16 of Customs, Central Excise Duties & Service Tax Drawback Rules, 1995. Moreover, the Writ Petition No. 4006/2013 filed by the department against the GOI Order No. 151/2013-Cus, dated 6-6-2013 has also been decided against the department by the Hon'ble High Court Bombay, Nagpur Bench vide its judgment dated 23.06.2017.

13. In view of subsequent developments as detailed above, the original cause of action which resulted in the proceedings for appropriation of confirmed demand against sanctioned Rebate claims itself has now been settled in favour of the applicant. Therefore, the orders appropriating the amounts sanctioned as Rebate towards the confirmed demand of drawback of Rs. 15,79,26,692/ cannot sustain.

14. Government, therefore, holds that the present Revision Applications filed against Orders-in-Appeal No. PVR/27 to 70/NGP/2012 dated 29.08.2012 have become infructuous and therefore Revision Applications bearing Nos. 195/1401-1443/12-RA are dismissed as having become infructuous.

15. So, ordered.

  
 (SEEMA ARORA)  
 Principal Commissioner & Ex-Officio  
 Additional Secretary to Government of India

ORDER No. <sup>298-340</sup> /2019-CEX (WZ) /ASRA/Mumbai Dated 10.12.2019.

To, \_\_\_\_\_  
 M/s. Indorama Synthetics (I) Pvt. Ltd.,  
 A-31, MIDC Industrial Area,  
 Butibori, Nagpur 441 122.

Copy to:

1. The Commissioner of CGST & CX, Nagpur-I, Telangkhedi Road, Civil Lines, Nagpur 440 001.
2. The Commissioner of CGST & CX (Appeals) Telangkhedi Road, Civil Lines, Nagpur 440 001.
3. The Deputy / Assistant Commissioner, Division Hingna, Nagpur-I, Telangkhedi Road, Civil Lines, Nagpur 440 001.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.