

**REGISTERED  
SPEED POST**



F.NO. 195/46-57/12-RA & 195/90-97/12-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. 01/04/12

ORDER NO. 303-322/2013-CX DATED 28.03.2013 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 35EE of  
the Central Excise Act, 1944 against the Orders-in-  
Appeal passed by the Commissioner (Appeals)  
Central Excise, Meerut-II as reflected at Column  
No.4 para 1 of this order.
- Applicant** : As stated at Column No.2 of the table in para 1 of  
this order
- Respondent** : Commissioner of Central Excise, Meerut-II

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ORDER

These revision applications are filed by the applicants, M/s Aroma Chemicals, Moradabad and M/s Shree Balaji Aromatics (P) Ltd., Moradabad against the orders-in-appeal numbers as mentioned in the given table below:

Sl. No	Name of the Applicant	Revision Application No.	Order-in-appeal No. & Date	Amount Involved/ Period covered
(1)	(2)	(3)	(4)	(5)
1	M/s Aroma Chemicals, Agwanpur, Moradabad	195/46-57/12-RA	533-544-CE/MRT-II/2011 8.11.11	Rs.4563117/- March 08 to June 08
2	M/s Shree Balaji Aromatics (P) Ltd., Chandausi, Moradabad	195/90-97/12-RA	525-532-CE/MRT-II/2011 8.11.11	Rs.2666374/- March 08

2. Brief facts of the case are that the applicants have filed various rebate claims under Rule 18 of the Central Excise Rules, 2002 read with Notification No.19/2004-Central Excise (NT) dated 06.09.2004, in respect of Central Excise duty paid on goods exported to different countries on the strength of ARE-Is, mentioned in the respective rebate claims. In respect of the goods exported against the said ARE-Is, the applicants had shown purchase of inputs mostly from various units including the units situated in J&K who were availing area based exemption under Notification Nos. 56/2002 & 57/2002-CE both dated 14.11.2002. The applicants were availing the CENVAT credit of duty paid on the inputs shown to have been procured from the J&K region under the provision of Rule 12 of the CENVAT Credit Rules, 2004. It also came to notice that the investigation against the units regarding fraudulent availment of cenvat credit in respect of inputs shown to have procured by the applicants from J&K based units was still going on at Central Excise Commissionerate Meerut-II. However, the Adjudicating Authority after due process of law rejected the rebate claims of the applicants.

3. Being aggrieved by the said orders-in-appeal, applicants filed appeal before Commissioner (Appeals) who allowed the appeal.

3.1 Aggrieved with the said orders-in-original the department filed revision application under Section 35EE of the Central Excise Act 1944 before the Joint Secretary (Revision Application), New Delhi who vide GOI Revision Order No.1119-1169/2011-Cx dated 12.9.11 remanded the case back to Commissioner (Appeals) for fresh decision on the ground that the orders-in-original confirming demand passed by the Commissioner of Central Excise, Meerut-II vide orders-in-original No.40-41/Comr/M-II/2010-11 dated 21.4.11 in the case of M/s Aroma Chemicals and orders-in-original No.1/Comr/M-II/2011-12 dated 14.6.11 in the case of M/s Shree Balaji Aromatics (P) Ltd., were not available before the Commissioner (Appeals) and therefore orders-in-appeal passed without taking into account the findings in said orders-in-original dated 21.4.11 and 14.6.11, were not sustainable. Accordingly, cases were remanded back to Commissioner (Appeals) for fresh consideration.

3.2 Consequent to the above Revision order dated 12.9.11 the Commissioner (Appeals) taken up the matter afresh. He observed that since the fraudulent availment of the cenvat credit had been established against the applicants vide the orders-in-original dated 21.4.11 and 14.6.11, the applicants were not entitled for the rebate of duty paid by them on the exported goods out of such fraudulently availed cenvat credit. He accordingly rejected the appeals vide orders both dated 8.11.11.

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

4.1 Show-cause-notices proposing recovery of fraudulently availed Cenvat credit and of erroneously sanctioned rebate claims were issued in July 2009 and December 2009 respectively which have been confirmed by the

Commissioner of Central Excise Meerut-II vide Order-in-Original No. 40-41/Commr/M-II/2010-11 dated 21.4.11 and 01/Commr/M-II/2010-11 dated 14.06.2011 respectively. The Applicants have challenged the demands confirmed by the Commissioner of Central Excise, Meerut-II by filing appeals before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi. The appeal is pending decision. Therefore, the matter of fraudulent availment of Cenvat credit has not attained finality, so far.

4.2 The Applicants submit that unless the matter of fraudulent availment of Cenvat credit attains finality, duty paid on export goods from Cenvat credit cannot be held irregular causing denial of rebate claim, admissible otherwise, under Rule 18 of the central Excise Rules, 2002 read with Notification 19/2004-CE(NT) dated 6.9.04 and Chapter-8, Pt.-I of CBEC's Excise Manual of Supplementary Instructions.

4.3 In view of above conditions and procedure prescribed for sanction of rebate, the sanctioning authority is to sanction rebate after satisfying himself that goods cleared for export under the relevant ARE-1 applications mentioned in the claim were actually exported, as evident by the original and duplicate copies of ARE-1 duly certified by Customs, and that the goods are of 'duty-paid' character as certified on the triplicate copy of ARE-1 received from the jurisdictional Superintendent of Central Excise. He is not required to check admissibility of Cenvat credit used for payment of duty on exported goods. The Applicants further submit that in the instant case the rebate claims have not been rejected for not following the provisions and procedure of above referred Rule 18 or notification issued thereunder or CBEC's instructions. The claims have been rejected on the ground that duty on exported goods was paid from Cenvat credit taken fraudulently on the basis of bogus invoices; which matter has not attained finality, so far.

4.4 The Applicants had cleared the goods for export under claim of rebate after payment of duty from Cenvat credit account in accordance to Rule 8 of the Excise Rules. Rule 8 of the Excise Rules prescribes the manner for payment of duty. Sub-rule (1) provides that duty on goods removed during a month is to be paid by 5th or 6th date of following month. Sub-rule (2) provides that "duty of excise shall be deemed to have been paid for the purposes of these rules on the excisable goods removed in the manner provided under sub-rule (1).....". In view of above, the Applicants submit that since duty on export goods was paid in terms of Rule 8(1) of the Excise Rules, the same in terms of Rule 8(2), *ibid*, would be deemed to have been paid for the purpose of the Excise Rules.

4.5 The Cenvat credit availed by the Applicants have been alleged irregular for which action to recover irregular credit taken/utilised along with interest and penalty has been initiated under Rule 14 & 15 of the Cenvat Credit Rules, 2004. Provisions under Rule 18 of the Excise Rules for granting rebate of duty on export goods are independent of the provisions of Rule 14 & 15 of the Credit Rules.

4.6 The central excise law provides different channels for hearing second stage appeals in the matters of rebate of duty and recovery of irregular Cenvat credit which is as under:

- Second stage appeals in relation to rebate claims are to be heard by the Government of India through its Joint Secretary (RA) as revision matters, and
- Second appeal or First stage appeal against order of the Commissioner regarding admissibility of Cenvat credit on inputs, capital goods and input services and recovery thereof are to be heard by the Customs,

Excise and Service Tax Appellate Tribunal ("CESTAT") and Hon'ble Supreme Court in case of further appeals.

- The Applicant submits that in case the contention of department to the extent that duty paid from alleged irregular Cenvat credit account is not a duty paid under Rule 8 of the Excise Rules, the matter involving rebate claims of such duties would also remain premature for decision by the Government of India in Revision Application till the issue of admissibility of Cenvat credit is finally decided by the CESTAT or the Hon'ble Supreme Court, as the case may. Deciding admissibility of Cenvat credit is not the jurisdiction of the Revisionary Authority. In such eventuality, authority of Joint Secretary (RA) of the Government of India becomes redundant for the purpose of deciding revision applications relating to rebate claims involving duty payment from alleged irregular/inadmissible Cenvat credit account; which can never be the intention of law.

4.7 Further, in the instant matter department's interest is secured in as much as department has been empowered to initiate action for recovery of irregular Cenvat credit through independent process under Rule 14 & 15 of the Credit Rules read with Section 11A, 11AB and 11AC of the Excise Act. There could be two possible results of such proceedings:

- Holding that the Cenvat credit taken was irregular; whereby department would recover the amount of Cenvat credit with interest and penalty. Once the amount of irregular credit is recovered the duty on export goods remains no more a disputed duty and rebate sanctioned, if any, to assessee would not be incorrect.
- Holding that the Cenvat credit taken is not irregular; thereby rebate sanctioned, if any, to assessee would not be incorrect.

4.8 In view of above, the Applicant submits that matter of sanction of rebate may be taken for decision in terms of Rule 18 of the Excise Rules, independent of the proceedings for recovery of irregular Cenvat credit as departments' interest is not jeopardized even when rebate is sanctioned and paid. However, in case rebate sanction order is set aside before the final decision on admissibility of Cenvat credit by different authorities, interest of the Applicant could be in jeopardy in view of time gap between the order of setting aside the rebate sanction/rejection order and the order holding the Cenvat credit inadmissible finally. This time gap being more than the time limit prescribed for filing of application against rebate rejection order would prevent the Applicants from making appeal/application against rebate rejection order if Cenvat credit is finally held admissible. Prudent law would never allow preventing appellate remedies otherwise available to any person.

4.9 Accordingly, the Applicants request that matter of sanctioning rebate claims be taken up for decision under Rule 18 of the excise Rules and notification issued thereunder independent of the proceedings initiated for admissibility of Cenvat credit and recovery of inadmissible Cenvat credit under Rule 14 & 15 of the Credit Rules. Alternately, the matter may be kept pending decision till the issue of admissibility of Cenvat credit is finally decided.

5. Personal hearing was scheduled in this case on 21.2.13. On the request of applicants hearing was held on 26.2.13. Shri S.K.Mathur, Advocate and Shri S.C.Dabral, Consultant appeared for hearing on 26.2.13 on behalf of the applicants who reiterated the grounds of revision application. They have stated that the orders-in-original passed by CCE, Meerut-II have now been set aside by Hon'ble CESTAT and cases are remanded back for fresh adjudication. Shri Udit Mohan Partner, M/s Aroma Chemicals also attended the hearing. Shri D.D.Mangal, Assistant Commissioner, Moradabad appeared on behalf of respondent department on 21.2.13 who submitted that the orders-in-appeal being legal and proper may be upheld.

6. Government has carefully gone through the relevant case records and perused the orders-in-original and orders-in-appeal.
7. Government notes that the applicants are mainly contending that the orders-in-original issued by Commissioner of Central Excise, Meerut-II confirming demand of fraudulently availed cenvat credit is challenged by them which is pending decision therefore the matter of fraudulent availment of cenvat credit has not attained finality so far; and the matter of sanctioning rebate under Rule 18 of Central Excise Rules 2002 and Notification issued thereunder are independent of the proceedings initiated for admissibility of cenvat credit and recovery of inadmissible cenvat credit under Rule 14 & 15 of the Cenvat Credit Rules. On the other hand department has stated that impugned orders-in-appeal being legal and proper may be upheld.
8. Government notes that in these cases the duty was paid on exported goods from the cenvat credit and department after conducting investigations in the matter issued show cause notices which were decided by the CCE, Meerut-II Commissionerate and demand of cenvat credit is confirmed vide order-in-original No.40-41/Comr/M-II/2010-11 dated 21.4.12 & 1/Comr/M-II/2011-12 dated 14.6.11 respectively. In subsequent appeal Hon'ble Tribunal vide final order No.A.55506-55510/13/Cx dated 29.1.13 and final order No.A/587-597/2012/CX/DB dated 14.5.12 set aside both the above said orders of CCE, Meerut-II and remanded the matter back to adjudicating authority for fresh decision.
9. Government notes that the department has been disputing the payment of duty on the export goods as the duty was paid from wrongly availed cenvat credit, by the manufacturer exporters who are the applicants in these cases. Government observes that this issue is yet to be decided in the denovo adjudication proceedings as ordered by Hon'ble CESTAT. In such circumstances the outcome of said adjudication will have a direct bearing in determining the admissibility of said rebate claims. At this stage, Government



cannot interfere with the ongoing proceedings in this case by giving any finding on merit of the contentions of applicant claiming correct availment of cenvat credit and also proper payment of duty on exported goods.

10. Government notes that the governing statutory provisions of grant of rebate are contained Rule 18 of Central Excise Rules, 2002 which reads as under:

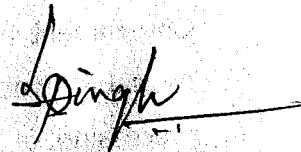
"Rule 18: Rebate of Duty: Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, any fulfillment of such procedure, as may be specified in the notification."

The provision of said rule stipulate that rebate of duty paid an excisable goods exported is admissible. The notification No.19/04-CE(NT) dated 6.9.04 issued under rule 18, stipulates the condition and procedure to be followed for availing rebate claim. In these cases, payment of duty is in dispute and case matter for recovery of wrongly availed Cenvat credit are pending adjudication. In view of above, it would be premature to decide the admissibility of rebate claim till the final outcome of ongoing above said denovo adjudication proceedings. Moreover, the applicants are manufacturer exporter and duty is paid from Cenvat credit which is under dispute. So, such payment of duty cannot be treated as duty paid validly unless the cenvat credit availed is held a valid cenvat credit. Thus the contention of applicants that proceedings initiated for recovery of wrongly availed cenvat credit are independent of sanctioning rebate claim cannot be accepted since duty paid on exported goods can only be rebated under Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.04. Therefore, in the interest of justice, the case is required to be remanded back for fresh consideration.

11. In view of above position, Government sets aside the impugned orders and remands the case back to the original authority for denovo consideration of rebate claim on the basis of outcome of the above ongoing denovo adjudicating proceedings pending before Commissioner of Central Excise.

13. Revision Applications are being disposed of in above terms.

14. So ordered.



(D.P.SINGH)

Joint Secretary (Revision Application)

1. M/s Aroma Chemicals, Agwanpur, Moradabad
2. M/s Shree Balaji Aromatics (P) Ltd., Moradabad

*Addressed*

*4/11/2012*

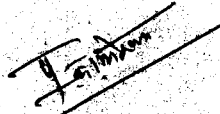
**श्री. क. रामेश्वराम / P. K. RAMESHWARAM**  
विशेष कार्य अधिकारी / OSD-II (RA)  
वित्त मंत्रालय, (राजस्व विभाग)  
Ministry of Finance (Dept. of Rev.)  
नए दिल्ली / New Delhi

Order No. 303-322/2013-Cx. dated 28.03.2013

Copy to:

1. Commissioner of Central Excise & Customs, Meerut-II, Opp. Shaheed Park, Near Ashok Ki Lat, Delhi Road, Meerut-01.
2. Commissioner (Appeals), Customs & Central Excise, Opp. Meerut University, Mangal Pandey Nagar, Meerut.
3. Deputy/Assistant Commissioner, Central Excise & Service Tax Division, Moradabad.
- ✓ 4. PA to JS(RA)
5. Guard File
6. Spare Copy.

ATTESTED



(P.K.Rameshwaram)  
OSD (Revision Application)

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