

**REGISTERED
SPEED POST**



**File No. 195/34-40/12-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..... 26/9/14

**ORDER NO. 333-339/14-CX DATED 26-9-14 OF THE
GOVERNMENT OF INDIA, PASSED BY Smt. ARCHANA PANDEY TIWARI,
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 ACT, 1944
AGAINST THE ORDERS-IN -APPEAL NO.
PASSED BY THE COMMISSIONER (APPEALS-II)
CENTRAL EXCISE-II**

APPLICANT : M/S. SHIV SHAKTI ENTERPRISES

**RESPONDENT : COMMISSIONER, CENTRAL EXCISE,
MEERUT-II**

ORDER

These revision applications are filed by M/s. Shiv Shakti Enterprises, Moradabad. against the orders-in-appeal No. 195-201-CE/MRT-I/2011 dated 28.06.2011 passed by the Commissioner of Central Excise(Appeals), Meerut-II with respect to orders-in-Original Passed by the Asst. Commissioner of Central Excise Division- Moradabad

2. Brief facts of the cases are that the applicants had filed the 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-1s mentioned in the respective rebate claims. which were duly sanctioned. In respect of the goods exported against the impugned ARE-1s, the applicant had shown purchase of inputs mostly from the unit situated in J&K, who were availing area based exemption under Notification 56/2002 & 57/2002-CE both dated 14.11.2002. The applicant was 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.

2.1 The adjudicating authority processed the rebate claims and sanctioned the same vide impugned orders-in-original.

3. Being aggrieved the department filed appeals before comm(A) against above said impugned orders-in-original, who decided the appeals by way of remand vide Orders-in-Appeal No. 50-56-CE/MRT-II/2009 dated 29.01.2009. the applicant filed revision applications, before the joint-Secretary (Revision Application) on the ground that comm(A) has no power of remand. The Joint Secretary (Revision Application) vide Revision order No. 379-390/11-CX dated 19.04.2011. remanded the cases back to Original authority to decide the same

on merits. In remanded proceedings, the comm(A) allowed the appeals filed by the department.

4. Being aggrieved by the impugned orders-in- appeal, the applicant has filed these revision application under section 35 EE of central Excise Act,1944 before central Government on the following grounds:

4.1 The Applicant submits that excisable goods were exported during December 2007 to February 2008. Rebate claims were filed in March- April 2008 and sanctioned by the Assistant Commissioner in May-June 2008. Notice proposing denial of CENVAT credit has been issued to the applicant in March 2010 and the same is pending adjudication. Unless the matter of fraudulent availment of CENVAT credit attains finality after adjudication proceedings of the aforesaid Notice, the duty paid on export goods from CENVAT credit cannot be held irregular causing denial of rebate admissible. otherwise under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred as " the Excise Rules "). The aforesaid notice also proposes recovery of Rs. 23,42331/- against alleged erroneous rebate sanctioned to the Applicant vide the original sanction orders under reference and appeal. Thus, the Commissioner (Appeals) has erred in holding that sanction of rebate claim was pre-mature.

4.2 The Applicant further submits that in the instant case goods were cleared 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 this the Applicant submits 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. Accordingly, the said duty would be deemed to have been paid for the purpose of rule 18 of the said rules. Further, Rule 8 *vide* sub- rule (3A) thereof, specifies the circumstances where goods could be deemed to have been cleared without payment of duty inviting consequences and penalties provided in the Excise Rules.

4.3 The CENVAT credit availed by the Applicant has 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 read with Rule 8 of the Excise Rules for granting rebate of duty on export goods are independent of the provisions of the Excise Rule 14 & 15 of the said Credit Rules.

4.4 The above contention of the applicant also gets support from the fact that central excise law provides different channels for hearing second stage appeals in the matters of rebate of duty and recovery of irregular CENVAT credit 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 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.

4.5 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 revisionary 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. In such eventuality, authority of Joint secretary (RA) of the Government of India becomes redundant for the purpose of deciding revision applications relating to such rebate claims ; which can never be the intention of law.

4.6 Further, in the instant matter department's interest is secured as the department has already initiated action for recovery of irregular CENVAT credit through independent process under Rule 14 & 15 of the Credit Rules read with Section 11 A, 11 AB and 11 AC 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 respondent would not be incorrect.
- Holding that the CENVAT credit taken is not irregular; thereby rebate sanctioned, if any, to respondent would not be incorrect.

5. Personal hearing was scheduled in this case on 18.10.2012, 10.03.2014, 11.09.2014, 16.09.2014. Hearing held on 16.09.2014 was attended by Shri S.K. Mathur, advocate on behalf of the applicant who reiterated the grounds of revision application. Shri Jagdish Narayan Singh, Superintendent appeared for hearing on behalf of department. The department vide letter dated 21.08.2014. stated that a show cause notice C. No. VI – CP(9) mentha enq. 08/08/Pt.18/3294 dated. 23.02.2010 was issued to the applicant demanding fraudulently availed credit of Rs. 48,90,224 along with interest and demanding erroneously

sanctioned rebate of Rs. 29,19,131.00/- along with interest, that the said case is pending for adjudication with Comm(Adj), New Delhi and that amount involved in impugned Revision Applications are also covered by the said show cause notice.

6. Government has carefully gone through the relevant case records/available in case files, oral & written submissions and perused the impugned Orders-in-Appeal.

7. On perusal of records, Government observes that the original authority initially sanctioned rebate claims. The department preferred appeals before Commissioner (A) against impugned orders-in-original on the ground that duty was paid on exported goods from fraudulently availed cenvat credit in respect of inputs shown to have been procured from various units including the units situated in Jammu & Kashmir who were availing area based exemptions but actually no inputs were received by the applicant. Commissioner (Appeals) decided the cases by way of remand vide order-in-appeal No.50-56-CE/MRT-II/2009 dated 29.01.2009. Against the said orders-in-appeal dated 29.01.2009, the applicant filed revision applications before Joint Secretary (Revision Application), who decided the same vide GOI Order No.379-390/11-Cx dated 19.4.2011 and directed the Commissioner (Appeals) to decide the case on merit. Commissioner (Appeals) in remand proceedings set aside the impugned orders-in-original and allowed department appeals. Now, the applicants have filed this revision application on the grounds stated at para (4) above.

8. Government observes that the applicant paid duty on exported goods, from cenvat credit availed in respect of inputs shown to have procured from J&K based manufacturers. Commissioner (Appeals) has recorded in his finding in order-in-appeal that department has carried out a detailed investigation and

issued a show cause notice to the applicant proposing recovery of cenvat credit taken by them during the period April' 2005 to March' 2009 and also for recovery/rejection of rebate claims involved in impugned cases which pertained to duty paid out of the cenvat credit fraudulently availed, and rebate claims erroneously sanctioned. The payment of duty on the exported goods is in dispute as the duty was alleged to have been paid from wrongly availed Cenvat credit. The applicant has mainly pleaded that they have taken cenvat credit legally and payment of duty is in order, that there is no violation of condition and procedure laid down in Notification No.19/04-CE (NT) dated 6.9.04.

9. 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 fulfilment of such procedure, as may be specified in the notification."

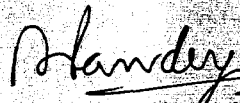
The condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04 stipulates that all excisable goods shall be exported after payment of duty directly from factory. The said provisions stipulate that rebate shall be granted of duty paid on excisable goods exported. In this case, payment of duty is in dispute and case for recovery of Cenvat credit & erroneously sanctioned rebate claims is pending adjudication before Commissioner (Adj.) New Delhi. Though there is no finding in the impugned order-in-appeal regarding any violation of condition/procedure as laid down in Notification No.19/04-CE (NT) yet the fact remains that duty paid nature of the exported goods is still in dispute. The fundamental condition for granting rebate is that duty paid nature of exported goods is established. The proceeding have been initiated vide the impugned show cause notice dated 23.02.2010 for recovery of wrongly availed cenvat credit as well as erroneously

sanctioned rebate claims and adjudication proceedings are pending before Commissioner of Central Excise. In view of this position, it is premature to decide the admissibility of rebate claim till the show cause notice dated 23.02.2010 pending adjudication before Commissioner of Central Excise (Adj), New Delhi is decided. The Government does not find force in argument of applicants that issue of demand of cenvat credit and rebate claims are two separate proceedings as the status of payment of duty will be decided in the said ongoing adjudication proceedings. As such, case is required to be remanded for denovo consideration in the light of outcome of adjudication proceedings in show cause notice dated 23.02.2010.

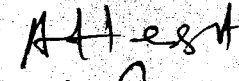
10. Under such circumstances, in the interest of justice, Government sets aside the impugned orders and directs the original authority to decide the rebate claims on the basis of adjudication order to be passed in the ongoing adjudicating proceedings in Show Cause Notice dated 23.02.2010 which is pending before CCE (Adj.). A reasonable opportunity of hearing may be afforded to the parties before deciding the case.

11. Revision Application is thus disposed off in above terms.

12. So, ordered.


26/9/14
(Archana Pandey Tiwari)
JOINT SECRETARY (REVISION APPLICATION)

M/s. Shiv Shakti Enterprises,
Begam Sarai,
Sambhal,
District : Moradabad (U.P)


(Dheeraj Shama)
Joint Secretary (Revision Application)
Commissioner of Central Excise
Moradabad
Finance (Dept. of Rev.)
Govt. of India
New Delhi

Copy to :

1. Commissioner, Central Excise, Meerut-II
2. Commissioner (Appeals) Central Excise, Meerut-II, Meerut.
3. Assistant Commissioner, Central Excise, Division-Moradabad.
4. Commissioner Customs and Central Excise Division, Moradabad.
5. Shri S K Mathur, Consultant (Sl. No.1-12), C-15, 16 Harthala Industrial Area, Kanth Road, Moradabad (U.P) 244 001.
- ✓ 6. PA to JS to (RA)
7. Guard File
8. Spare Copy

ATTESTED



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