

REGISTERED
SPEED POST



F.No.195/161-167/12-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: 21/11/14

ORDER NO. 366-372/2014-Cx DATED 28-11-2014 OF THE GOVERNMENT OF
INDIA, PASSED BY SMT. ARCHANA PANDEY TIWARY, JOINT SECRETARY TO THE
GOVERNMENT OF INDIA, UNDER SECTION 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.571-577/CE/MRT-II/11 dated 21.11.2011 passed
by the Commissioner of Central Excise (Appeals)
Meerut-II

Applicant : M/s Ansar Chemicals, Lodhi Sarai, Sambhal,
Moradabad, (UP)

Respondent : Commissioner of Central Excise, Meerut-II

ORDER

The revision applications are filed by M/s Ansar Chemicals, Moradabad against the orders-in-appeal No.571-577/CE/MRT-II/11 dated 21.11.2011 passed by the Commissioner of Central Excise (Appeals) Meerut-II with respect to order-in-original passed by the Assistant Commissioner Central Excise Division-Moradabad.

2. Brief facts of the cases are that the applicant 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 rejected the rebate claims vide impugned orders-in-original on the ground that the unit was availing cenvat credit on the basis of bogus invoices issued by the J&K based units and have utilized the same towards payment of duty for final products under the rebate claim.

3. Being aggrieved the applicant filed appeals before Commissioner (Appeals) against abovesaid impugned orders-in-original, who decided the appeals in favour of applicant vide Orders-in-Appeal No. 366 to 372-CE/MRT-II/2009 dated 27.11.2009. The department filed revision applications before the Joint Secretary (Revision Application). The Joint Secretary (Revision Application) vide Revision order No. 1119-1169/11-CX dated 12.09.2011 remanded the cases back to appellate authority to decide the same by taking into account order-in-original passed by the adjudicating authority

in respect of show cause notice issued to the applicant regarding fraudulent availment of cenvat credit. Commissioner (Appeals) decided the cases in favour of 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 under Rule 18 of the Central Excise Rules, 2002 (hereinafter referred as " the Excise Rules "). The aforesaid notice also proposes recovery of Rs. 23,42,331/- 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 held in this case on 29.10.2014 was attended by Shri R.L.Thapliyal, Consultant on behalf of the applicant who reiterated the grounds of revision application. During the course of hearing, the applicant pointed out certain factual infraction in impugned orders-in-appeal and submitted a written submission in this regard. The applicant stated that the impugned orders-in-appeal wrongly mentioned that show cause notice C.No.IV-CE(9)CP/Mentha Enquiry/08/08/Pt.9A/1119 dated 15.1.2010 pertains to order-in-original No.29/Addl. Commr/M-II/2011 dated 31.3.2011 and that actually vide the said order-in-original dated 31.3.2011 show cause notice No. C.No.IV-CE(9)CP/Ansar/M-II/09/06/Pt.1 dated 12.9.2007 was adjudicated.

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 rejected rebate claims. The applicant preferred appeals before Commissioner (A) against impugned orders-in-original. Commissioner (Appeals) decided the cases in favour of applicant vide order-in-appeal No.366-372-CE/MRT-II/2009 dated 27.11.2009. Against the said orders-in-appeal dated 27.11.2009, the applicant filed revision applications

before Joint Secretary (Revision Application), who decided the same vide GOI Order No.1119-1169/11-Cx dated 12.9.2011 by taking into account orders-in-original passed by the adjudicating authority, in respect of show cause notice issued to the applicant regarding fraudulent availment of cenvat credit and directed the Commissioner (Appeals) to decide the case. Commissioner (Appeals) in remand proceedings decided the cases in favour of department. Now, the applicants have filed this revision application on the grounds stated at para (4) above.

8. Government finds that the applicant during the course of personal hearing has pointed out certain discrepancies. The applicant stated that the impugned orders-in-appeal wrongly mentioned that show cause notice C.No.IV-CE(9)CP/Mentha Enquiry/08/08/Pt.9A/1119 dated 15.1.2010 pertains to order-in-original No.29/Addl. Commr/M-II/2011 dated 31.3.2011 and that vide the said order-in-original dated 31.3.2011 show cause notice No. C.No.IV-CE(9)CP/Ansar/M-II/09/06/Pt.I dated 12.9.2007 is adjudicated. The applicant also stated that show cause notice dated 15.1.10 is still pending for adjudication before the Commissioner (Adjudication), Central Excise, Delhi.

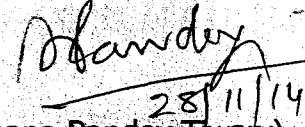
9. On perusal of documents submitted during the course of hearing, Government finds that para 36 of copy of order-in-original No.29/Addl. Commr/M-II/2011 dated 31.3.2011 mentions show cause notice bearing C.No.IV-CE(9)CP-Ansar/M-II/09/06 dated 12.9.2007, which pertains to demand of fraudulently availed credit from November 2005 to 31.3.2006. The show cause notice C.No.IV-CE(9)CP/Mentha Enquiry/08/08/Pt.9A/1119 dated 15.1.2010 pertains to period April 2006 to March 2009. Commissioner (Appeals) has rejected the appeals of the applicant by holding the said order-in-original dated 31.3.2011, SCN dated 15.1.2010 has been adjudicated and the appeal filed by the applicant against order-in-original dated 31.3.2011 has been rejected by the Commissioner (Appeals) and as such, the order-in-original of Additional Commissioner confirming the demand of fraudulent availment of cenvat credit has been upheld. Now, since there has been substantial change in facts and circumstances of the case due to aforesaid factual infirmities, the orders of Commissioner (Appeals)

the case due to aforesaid factual infirmities, the orders of Commissioner (Appeals) based on such factual infirmities become infructuous and hence, liable to be set aside on this count only, without going into further merits of these cases. Under such circumstances, the interest of justice demands that the cases may be remanded back to appellate authority to decide the same afresh on the basis of correct factual position.

10. Under such circumstances, Government sets aside the impugned orders and directs the appellate authority to decide the cases afresh in view of above observations. Reasonable opportunities of hearing may be afforded to the parties before deciding the case.


11. Revision applications are thus disposed off in above terms.

12. So, ordered.


28/11/14

(Archana Pandey Tiwary)
Joint Secretary (Revision Application)

M/s Ansar Chemicals,
Lodhi Sarai, Sambhal,
Moradabad, (UP)


(आनशुवर शर्मा/Anshuwer Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-O.S.D. (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Order No. 366-372/2014-Cx dated 28-11-2014

Copy to:

1. Commissioner of Central Excise & Customs, Merrut-II, (Opp. Shaheed Smarak), Delhi Road, Meerut.
2. Commissioner (Appeal), Central Excise, Meerut-II, (Opp. Shaheed Smarak), Delhi Road, Meerut.
3. Asstt. Commissioner, Customs & Central Excise, Division-Moradabad.

~~4.~~ PA to JS(RA)

5. Guard File

6. Spare Copy.

ATTESTED



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