

REGISTERED
SPEED POST



F.No.195/187/13 & 195/188-194/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6 FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...15/3/16.....

ORDER NO. 40-47/2016-CX DATED 10.03.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, 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 Orders-in-Appeal passed by Commissioner of Central Excise (Appeals), Mumbai-II, as detailed in table (1).

Applicant : M/s. Hindalco Industries Limited

Respondent : Commissioner of Central Excise, Raigad

ORDER

This Revision Application is filed by the M/s Hindalco Industries Ltd, against the Orders-in-Appeal passed by Commissioner of Central Excise (Appeals), Mumbai with respect to Orders-in-Original passed by the Deputy Commissioner of Central Excise Raigad, as detailed in Table-I.

Sl. No	Revision Application File No.	Name of the Applicant	Order-in-Appeal No. & Date	Order-in-Original No. & Date
1	195/187/13-RA-CX	M/s Hindalco Industries Ltd	BC/492/RGD/(R)/ 2012-13 dated 31-12- 2012 Passed by CCE(Appeals) Mumbai-III	2311/2011-12 dated 29.12.2012
2	195/188-194/13-RA-CX	-do-	US/704 -710/RGD/2012 dated 25.10.2012 Passed by CCE(Appeals) Mumbai-II	1208/11-12/ DC(Rebate) Raigad dated 18.11.2012
3	195/188-194/13-RA-CX	-do-	-do-	1526/11-12/ DC(Rebate) Raigad dated 22.12.2011
4.	195/188-194/13-RA-CX	-do-	-do-	1530/11-12/ DC(Rebate) Raigad dated 22.11.2011
5.	195/188-194/13-RA-CX	-do-	-do-	2005/11-12/ DC(Rebate) Raigad dated 07.02.2012
6.	195/188-194/13-RA-CX	-do-	-do-	1927/11-12/ DC(Rebate) Raigad dated 28.01.2012
7.	195/188-194/13-RA-CX	-do-	-do-	1988/11-12/ DC(Rebate) Raigad dated 31.01.2012
8.	195/188-194/13-RA-CX	-do-	-do-	2478/11-12/ DC(Rebate)/ Raigad dated 20.03.2012

2.1 The facts relevant for the present revision application are that the applicants during the period in question have exported Copper Cathodes on payment of excise duty. Excise duty has been paid by the Applicants on the value which is finally assessed and is inclusive of freight & insurance i.e. CIF value and rebate claim were filed.

2.2 Rebate claim filed by the applicants were verified by the Superintendent Central Excise, Range IV, Bharuch Division who confirmed the fact of payment of duty.

2.3 Subsequent to such verification, Ld. Deputy Commissioner vide impugned Orders-in-Original allowed rebate claim of only upto duty payable on FOB value and part claims were rejected on the ground that rebate of excise duty paid on value of freight & insurance is not admissible.

3. Aggrieved by the above impugned Orders-in-Original the applicants preferred appeals before Commissioner (Appeals), Central Excise, Mumbai Zone-II.

3.1 Commissioner (Appeals), Mumbai vide impugned Orders-in-Appeal No. US/35-39/RGD/2012 dated 19.01.2012; US/239-243/RGD/2012 dated 17.04.2012 and US/408-409/RGD/2012 dated 19.06.2012 held that applicant are not entitled for refund of excess duty paid on account of freight & insurance and upheld the impugned Orders-in-Original. Commissioner (Appeals) however held that the applicants are at liberty to file a refund claim for re-credit of the excess duty paid by them before the jurisdictional authorities.

3.2 The applicants filed the refund claim with their jurisdictional Assistant/Deputy Commissioner for the excess duty paid by them on freight & insurance charges.

3.3 The department also filed appeals against these Orders-in-Original passed by Deputy Commissioner (Rebate) Raigad inclusive of the Order-in-Original No. 2005/11-12/Dc(Rebate)/Raigad dated 07.02.2012 before the Commissioner (Appeals), Mumbai on the ground that rebate is admissible only of FOB value declared in Shipping Bill and therefore the excess rebate sanctioned by the Deputy Commissioner is required to be rejected.

3.4 The Commissioner (Appeals) held that the applicants have paid duty on exported goods on CIF value and the CIF value cannot be transaction value and freight and insurance beyond the port of export cannot be part of transaction value. It is held that since the rebate has already been sanctioned and paid to the applicants, the plea of re-credit of that excess amount in the Cenvat credit account can be allowed only after the excess rebate is paid back with interest.

4. Being aggrieved by the impugned Orders-in-Appeal, the applicant has filed their revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds.

4.1 The applicants submit that in the impugned order failed to appreciate the factual aspect of the matter. It is submitted that the issue as to whether rebate is admissible on CIF value or FOB value was subject matter in appeal filed by the

applicants against Order-in-Original dated 07.02.2012 by which Deputy Commissioner rejected the rebate claim to extent duty paid on Freight & insurance. The appeal of the applicants was dismissed by the Commissioner (Appeals) vide Order in Appeal No. US/239 to 243/RGD/2012 dated 17.04.2012 Commissioner (Appeals) directed the applicants to file separate refund claim for excess duty paid. The applicants therefore submit that the issue as to whether rebate is admissible on CIF value or FOB value was not the subject matter of the appeal filed by the department and therefore to such an extent the impugned order passed by the Commissioner (Appeals) travel beyond the appeal filed by the department and same is liable to be set aside.

4.2 The applicants are engaged in manufacture of Copper cathode which is cleared on provisional basis for which the applicants execute necessary bond for provisional assessment with the Jurisdictional Deputy Commissioner at Bharuch. The clearances for export are provisional as at the time of clearance of goods, the price is based on the LME price prevailing at that point of time. Therefore, the price and duty paid at the time of export is based on prevailing LME price. The said price is re-worked out and differential duty is paid on the basis of average LME price of the agreed quotational period. Accordingly, the statement of duty paid at the time of export and differential duty paid on the basis of the provisional LME price is debited and the intimation of the said action is given to the jurisdictional Assistant Commissioner. Thereafter, the provisional assessment is finalized by the Assistant Commissioner, Bharuch. The finalization of provisional assessment is sent directly by the jurisdictional Range Superintendent to the Deputy Commissioner (Rebate), Raigad for sanctioning the rebate claim. The applicants have adduced the provisional shipping bill which was later finalized at the end of the Applicants. The applicants state that difference in amount of provisional assessment and final assessment is due to escalation in LME prices which is approved by the Jurisdictional Deputy Commissioner. The contention of the Department that the difference in the price is on account of freight and insurance charges is baseless and without any substance. As submitted in the facts supra, Deputy Commissioner had already deducted the value of freight and insurance charges in the Order-in-Original which was affirmed by the Commissioner (Appeals), Mumbai. Accordingly, the Applicants had applied for refund of the amount paid in excess of FOB value. The applicants therefore submit that the Deputy Commissioner has rightly allowed the rebate claim on FOB value finally assessed. It cannot be the case of the department that excise duty is not payable on value so assesses finally nor it is the case of the department that the value finally assessed is lower than value provisionally assessed. Even if that be the case, the applicants are entitled of the same.

4.3 Rule 18 of the Central Excise Rules, 2002 grants rebate of the excise duty paid on finished goods exported. Notification No. 19/2004-CE dated 06.09.2004 issued under Rule 18 grants rebate of the whole of the duty paid on all goods

exported. In view of the above, it is clear that whole excise duty paid is available as rebate. Such clear language employed by legislation cannot be ousted by interpretation advanced by the Commissioner (Appeals). Whatever amount is paid as excise duty is available as rebate. In the present case, it is not disputed the rebate claims filed by the Applicants represent whole of duty paid by the Applicants. Therefore, the contention of the Commissioner (Appeals) disallowing a part of rebate claim is incorrect. The CESTAT in Gayatri Laboratories vs. CCE-2006 (194) ELT 73 (T) held that rebate claim to the extent of duty paid is available and that the rebate claim cannot be restricted on ground that less duty should have been paid in terms of Notification.

4.4 CBEC vide its Circular dated 03.02.2000 has categorically clarified that the duty on export goods should be paid by applying market rate as it prevails at time the duty is paid on such goods. Once value in accordance with section 4 of the Central Excise Act, 1944 is determined and duty is paid, rebate has to be allowed equivalent to the duty paid. Therefore, in the present case the rebate has been rightly claimed by the Applicants on value finally assessed as per the provisions of Section 4 of the Central Excise Act, 1944.

5. Personal hearing was scheduled in this case on 05.11.2015 was attended by Shri Vipin Upadhyay Advocate, behalf of the applicant who reiterated the grounds of revision application. Nobody attend hearing on behalf of department.

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

7. Government observes that applicants rebate claims were held admissible only to the extent of duty paid on FOB value and duty paid over and above FOB value liable to be refunded in form of recredit. This observations were upheld by Commissioner (Appeals) while deciding appeals filed by the applicant vide Orders-in-Appeal No. US/35-39/RGD/2012 dated 19.01.2012; US/239-243/RGD/2012 dated 17.04.2012 and US/408-409/RGD/2012 dated 19.06.2012 and it was held that the applicant was at liberty to file refund claim for excess paid duty on account of freight and insurance. Accordingly, the applicant filed claims for refund. Simultaneously, the department also filed appeals against above said Orders-in-Original. Commissioner (Appeals) vide impugned Orders-in-Appeal held that the applicant is entitled for rebate of duty paid upto FOB value and remaining amount may be allowed as recredit subject to condition that already paid rebate is paid back along with interest. Now, the applicant has filed these Revision Applications on grounds mentioned in para 4 above.

8. Government observes that the applicant filed various appeals before Commissioner (Appeals) against Orders-in-Original mentioned at Sr. Nos. 3 to 7 in table (1) above. The applicant challenged part rejection by the original authority on the ground that the rebate claims are admissible only upto FOB value. Commissioner (Appeals) in these appeals filed by the applicant held that rebate is admissible only upto FOB value and the applicant is at liberty to file refund claims of excess paid duty. By accepting these orders and not filing any appeal against said orders of Commissioner (Appeals), the applicant has accepted the legal position that the rebate is admissible only upto the extent of FOB value and any amount paid over and above FOB value needs to be paid back in term of Cenvat Credit.

8.1 The present Revision Applications have arisen due to impugned Orders-in-Appeal, which have been decided with regards to appeals filed by department, wherein, department has contended that rebate is admissible only upto duty paid on FOB value. The Commissioner (Appeals) accepted the department's contention and allowed cash rebate only upto FOB value and any amount paid over FOB value may be allowed as recredit subject to condition that the applicant repays the amount of excess paid rebate with applicable interest.

8.2 Government further notes that it has from time to time in a *catena* of its decisions examined the issue of transaction value with respect to CIF value / FOB value in a number of Revision Orders as in the case of namely, M/s Pidilite Industries Ltd., Government of India Order Nos. 1536-1564/2011-CX dated 18.11.2011, M/s Rohm & Hass (I) Pvt. Ltd., Government of India Order Nos. 728-732/2011-RA-CX., M/s Vinati Organics Ltd., Government of India Order Nos. 573-604/2011-CX., dated 26.05.2011, M/s Unique Pharmaceutical Laboratories, Government of India Order Nos. 1274-1369/2011-CX dated 30.09.2011, 1631-1708/2011-CX dated 22.12.2011, 1008-1033/2011-CX dated 11.08.2011, Government of India Order Nos. 124-135/2012-CX dated 14.02.2012, Government of India Order Nos. 34-40/2013-CX dated 15.01.2013 and M/s Sumitomo Chemicals India Pvt. Ltd., Government of India Order No.195/126/2012-RA. In all these orders, a similar decision is taken. In these orders, it has consistently been held that rebate of duty paid on transaction value of goods as determined under Section 4 *ibid* is admissible under Rule 18 *ibid* read with Notification No.19/2004-CE (NT) dated 06.09.2004 and the duty is not to be paid on CIF value of goods but duty is to be paid on transaction value determined under Section 4.


8.3 In view of above circumstances, since applicant did not prefer any appeals before higher appellate forum against Orders-in-Appeal mentioned at para 3.1 above and discussions made in above paras, Government does not find any infirmity in orders of Commissioner (Appeals) and hence, upholds the same.

9. Revision Applications are thus rejected being devoid of merits.
10. So, ordered.


(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s. Hindalco Industries Ltd.
Unit: Birla Copper,
P.O- Dahej At- Lakhigem,
Distt. Bharuch-392130.

Attested.


(Anil Kumar Singh)
Assistant Commissioner
C.E.C.-D.S.D. (Revision Application)
Ministry of Finance (Deptt. of Ex. & Taxation)
New Delhi

ORDER NO. 40-47/2016-CX DATED 10.03.2016

Copy to:

1. Commissioner of Central Excise, Raigad Commissionerate, Plot No.1, Sector 17, Khandeshwar, Navi Mumbai-410206
2. The Commissioner of Central Excise (Appeals-II), Mumbai-III, 5th Floor, C.G.O. Complex CBD Belapur, Navi Mumbai-400614.
3. The Deputy Commissioner of Central Excise (Rebate), Raigad, Plot No.1, Sector 17, Khandeshwar, Navi Mumbai-410206
4. M/s. LakshmiKumaran & Sridharan Advocates, 104, Kakad Chambers, 132, Dr. A.B.Road, Mumbai-400018
- ✓ 5. Guard File.
6. PA to JS (RA)
7. Spare Copy

ATTESTED


(B.P.Sharma)

OSD (RA)
(B.P.Sharma)
Assistant Commissioner
C.E.C.-O.S.D. (Revision Application)
Income Tax Department (Central Excise)
Ministry of Finance (Deptt. of Rev.)
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