

198/26/2014-RA, 198/62/2014-RA
198/70/2014-RA

REGISTERED
SPEED POST



F.No. 198/26/2014-RA, 198/62/2014-RA
198/70/2014-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... 5/1/18

Order No. 42-44/18-CX dated 5-1-18 of the Government of India, passed by Shri R.P.Sharma, Principal Commissioner & Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Applications filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.JAL-EXCUS-000-APP-275 to 285-13-14 dated 15.1.14, No.JAL-EXCUS-000-APP-53-14-15 dated 19.5.14 and No.JAL-EXCUS-000-APP-137-14-15 dated 18.9.14 passed by Commissioner of Central Excise (Appeals), Chandigarh-II

Applicant : Commissioner of Central Excise, Ludhiana

Respondent : M/s. Parabolic Drug Ltd., Derabassi, Mohali

ORDER

Three Revision Applications No. 198/26/2014-RA, 198/62/2014-RA and 198/70/2014-RA are filed by Commissioner of Central Excise, Ludhiana, (hereinafter referred to as the applicant) against OIA Nos. JAL-EXCUS-000-APP-275 to 285-13-14 dated 15.1.14, JAL-EXCUS-000-APP-53-14-15 dated 19.5.14 and JAL-EXCUS-000-APP-137-14-15 dated 18.9.14, passed by the Commissioner of Central Excise (Appeals), Chandigarh-II, who has rejected the Revenue's appeal against Orders passed by the Assistant Commissioner of Central Excise Division allowing the rebate of duty to M/s. Parabolic Drug Ltd., Derabassi, Mohali (hereinafter referred to as the respondent).

2. The revision applications have been filed mainly on the ground that rebate of duty on exported goods is not admissible to the respondent as they did not pay central excise duty during the period March 2012, June 2012 and August 2012 by due date during which the export of goods was effected by the respondent and they paid central excise duty in the months of January 2013 and March 2013 only for the above 3 months. Thus the respondent had defaulted in payment of duty and as per Rule 8(1)(3)A of the Central Excise Rules, the respondent was required after 13.4.12 to pay excise duty in cash for each consignment at the time of removal without utilizing CENVAT credit till such time the assessee paid the outstanding amount including interest thereon. But the respondent did not pay duty consignment-wise through current account till 30.3.13 and as a result thereof clearance of excisable goods by the respondent from 1.5.12 to 30.3.13, including export of goods involving rebate of duty of Rs.2753595/- in these revision applications, were to be considered to have been

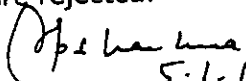
cleared without payment of duty and accordingly the rebate of duty is not admissible to the applicant.

3. Personal hearings were offered on 25.10.17 and thereafter on 8.12.17 in this matter. But neither applicant nor the respondent appeared for personal hearing on 25.10.17. The advocate of the respondent requested for short adjournment for the reason that Shri Rupender Sinhmar, the advocate, was suffering from fever and cold. However, on 8.12.17 the hearing was attended by Shri Anil Gupta, Assistant Commissioner, Derabassi, for the applicant who reiterated the grounds of revision already pleaded in their application. But no one appeared for the respondent and a short adjournment was again requested repeating the same reason that Shri Rupender Sinhmar has suddenly fallen sick last night and is not in a position to attend the hearing. Accepting their request the hearing was fixed on 22.12.17 for the third time and the same was attended by Shri Rupender Sinhmar, advocate who opposed the revision applications filed by the revenue in these cases.

4. On examination of the revision applications, Commissioner (Appeals)'s Order and all other relevant records, the Government finds that there is no dispute regarding export of goods by the respondent, payment of duty on the exported goods from CENVAT credit during default period and eventual rectification of the default by the respondent in the months of January and March, 2013 when the defaulted amount was paid in cash along with interest. Thus, the duty payment on the goods cleared by the respondent has been finally regularized and in such situation it cannot be accepted that the goods cleared to the respondent were not duty paid. This matter has also been clarified in CBEC's

Circular No. 766/82/2003-CX dated 15/12/2003 wherein it has been stated that the default of duty remains only till such time the amount of duty outstanding and the interest payable thereon are not paid and also no action is warranted against the buyer of the such goods even if he has availed CENVAT credit of such duty. The respondent has also pleaded during the personal hearing that Rule 8(3A) of Cenvat Credit Rules, 2004 is otherwise also held to be unconstitutional by the Gujarat High Court in the case of Indsur Global Ltd. 2014(310) ELT 833 (Guj) and it is followed by Punjab & Haryana High Court in Sandlay Industries Vs. UOI, 2015(326) ELT 256(P&H) and recently by Allahabad High Court in the case of Frontier Alloys Steel Ltd. Vs. UOI 2017 (354) ELT 54 (All.) considering all these facts and decisions, the Government finds that the Commissioner (Appeals) has taken a just and proper view in these cases and the applicant has not made out any case to justify any revision in the order of the Commissioner (Appeals).

5. Accordingly, the revisions applications filed by the applicant are rejected.


(R.P.Sharma)
5-1-18

Additional Secretary to the Government of India

Commissioner of Central Excise, Ludhiana
Sadashiv Complex, Ambala-Chandigarh Road
Derabassi, Punjab.

G.O.I. Order No. 42-44/18 Cx dated 5-1-2018

Copy to:-

1. M/s Parabolic Drug Ltd., Village Sundran, Derabassi, Distt. SAS Nagar, Mohali, Punjab.
2. Commissioner (Appeals), Central Excise, Chandigarh-II, C. R. Building, Plot No. 19, Sector-17, Chandigarh.
3. The Deputy Commissioner, Central Excise Division, Sadashiv Complex, Ambala-Chandigarh Road, Derabassi.
- ✓ 4. PA to AS(Revision Application)
5. Guard File
- ✓ 6. Spare Copy.

ATTESTED

(Debjit Banerjee)
STO (R.A.)