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F.No.198/458-460/11-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..31.5.13

ORDER NO. 445-447 /2013-CX DATED 30.5.2013 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 35 EE of the Central Excise Act, 1944 against the order-in-appeal No. 84-86/CE/LDH/09 dated 29.3.11 passed by the Commissioner of Customs & Central Excise (Appeals) Chandigarh
Applicant	:	Commissioner of Customs & Central Excise, Chandigarh
Respondent	:	As stated at Column No.3 of the table in para 1 of this order

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ORDER

This revision application is filed by the applicant Commissioner of Central Excise, Ludhiana against the order-in-appeal No. 84-86/CE/LDH/09 dated 29.3.11 passed by the Commissioner of Customs & Central Excise (Appeals) Chandigarh with respect to order in original No.40/CE/APC/LDH/09 dated 30.4.10 passed by the Additional Commissioner of Central Excise, Ludhiana as per given details:

Sl. No.	Name of the Applicant	Name of the respondent	Duty demanded	Penalty imposed
(1)	(2)	(3)	(4)	(5)
1	CCE, Ludhiana	M/s Sundesh Springs Pvt. Ltd., Ludhiana	44,40,546/-	44,40,546/-
		M/s Girnar Impex, Ltd., Ludhiana	NIL	2,00,000/-
		Shri Adishwar Jain, MD, M/s Sundesh Springs Pvt. Ltd., Ludhiana	NIL	2,00,000/-

2. Brief facts of the case are that the contingents of the Directorate General of Revenue Intelligence raided the business/residential premises of respondent no. 1, a manufacturer exporter and the respondent no. 2, a merchant exporter (both firms having common Directors) and observed that they were engaged in fraudulently availment of export incentives (DEPB credits and rebate of duty paid on export goods) by way of mis-declaration of the description of goods made from non-alloy steel in the guise of alloy steel and also by over valuing the same. Investigation further revealed that most of the purchases of alloy steel items were shown to be purchased from one M/s S.P. Industrial Corporation, Ludhiana (a manufacturer of Sewing machines). It was found that only invoices were issued by the said suppliers without supply of any material. Accordingly, show

cause notice dated 01.08.2006 were issued to the respondent and others proposing recovery of fraudulently claimed rebate amounting to Rs.44,40,546/- from respondent No.1 and proposing penal action upon the respondent and others. In the adjudication proceedings, the adjudicating authority ordered recovery of wrongly sanctioned rebate of Rs.44,40,546/- along with interest and imposed penalty of equivalent amount upon respondent No.1 and imposed penalty of Rs.2,00,000/- each on respondent No.2 and respondent No.3 under Rule 26 of the Central Excise (No.2) Rules, 2001/Central Excise Rules, 2002.

3. Being aggrieved with the order-in-original applicant filed appeal before Commissioner (Appeals), who set aside the impugned order-in-original and allowed the appeal.

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

4.1 The rebate of duty was granted of duty paid on exported goods under Rule 18 of the Rules read with Notification No. 40/2001-Central Excise (NT), dated the 26th June 2001.

a) Rule 18 of the Central Excise Rules, 2002 reads as under:

> " Where any goods are exportecl, 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, and fulfillment of such pr6'cedure, as may be specified in the notification. "

Relevant provisions of 19/09-Central Excise (NT), dated the 6.9.04 issued under Rule 18 ibid read as under:

> In exercise of the powers conferred by rule 18 ofthe Central Excise (No.2) Rules, 2001, the Central Government hereby directs that there shall be granted subject to conditions and limitations specified in paragraph 2 and procedures specified in paragraphs 3 and 4, -
>
> (a) rebate of whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), except mineral oil products falling under Chapter 27 of the First Schedule to the Central Excise Tetitt Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run, on their exportation to any country except Nepal and Bhutan;
>
> (b) .....

(2) **Conditions and limitations:-**

> (i) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse except as otnetwise permitted by the Central Board of Excise and Customs by a general or special order;

From the above, it was evident that rebate is admissible only if duty has been paid on exported goods. In the instant case, the party no.1 had paid duty allegedly from the balance of cenvat credit which was not admissible to them in as much as investigations conducted in the case clearly prove that supplier/dealers of inputs had not supplied any input to party No.4 but only paper transactions have been carried out in this regard. As per Cenvat Credit Rules the Cenvat, Credit is admissible only if following conditions are satisfied:-

i) physical receipt of inputs;

ii) duty paid character of inputs;

iii) use of inputs in the manufacture of excisable goods;

iv) clearance of finished goods manufactured out of the Cenvatable inputs on payment of duty.

Rather there is documentary evidence as arrived at during investigation by tile DRI that the goods, purportedly declared to have been exported under the relevant ARE-1s on which the party has claimed rebate of duty have not actually been procured, manufactured and exported from the premises of the party No.1. Rather cheap, substandard, non-alloy steel bars, rods, bright bars etc. has been procured-manufactured and exported, hence Cenvat Credit is not admissible. When availment/utilization of cenvat credit is ab-initio in-admissible to the party no. 1, the so called payment of central excise duty in respect of present rebate claims were no more payment of Central Excise duty.

4.2 The Commissioner (Appeals) has erred in giving observation that there is nothing on record to suggest that the credit has been fraudulently availed by party No.1 and there is no proposal for denial of credit to Party No.1. The Commissioner (Appeals) while giving the above observation had totally ignored the facts of the case and concrete and definite conclusion arrived at after discrete investigations by the DRI, which has proved beyond doubt that both the parties indulged in fraudulent availment of export incentives including rebates. Further, investigations revealed that the party No. 1 was also engaged in fraudulent availment of Duty Entitlement Pass Book (in short DEPB) credits by resorting to mis-declaration of value and description of export goods. Non-alloy Steel Bars, Rods, Bright Bars etc. of value ranging from Rs.15/- to Rs.17/- per kg. were being exported in the guise of Alloys Steel Forgings, Bars and Rods Shaft, Blanks etc. by mis-declaring value thereof at around Rupees 110/- to Rs.150/- per kg. They had shown export of alloy Steel Forging etc. the raw material purchase of which was merely a paper transaction without actual receipt of the inputs. The

goods, purportedly declared to have been exported under the relevant ARE-1s on which the party has claimed rebate of duty, have not actually procured, manufactured and exported from the premises of the party No.1. Rather cheap; substandard, non-alloy steel bars, rods, bright bars etc. have been procured, manufactured and exported, therefore the rebate of duty is not admissible. The said rebate of duty to the tune of Rs.44,40,546/- erroneously refunded to the party No. 1 were liable to be recovered under Section 11 A of the Act.

4.3 The Commissioner (Appeals) observed that rebate cannot be denied when the factum of exports is undisputed. The Commissioner (Appeals) while observing this has not appreciated the fact that the party had paid duty out of the Cenvat credit not admissible to them. The supplier of the goods Sh. Prabhjot Singh Prop. of M/s. S.P. Industrial Corporation, Ludhiana, in his statement dated 11.10.2003 and 12.10.2003 admitted that as his financial position was not good in those days, so with an intention to make fast money, he issued bills in the name of M/s. Sundesh Springs Pvt Ltd., and M/s. Girnar Impex Limited, without supplying and alloy non-alloy steel items. Therefore, in view of confessional statement of supplier of the goods that he has not supplied the goods, the Cenvat Credit availed/utilized for payment of duty on the export goods was wrongly availed/utilized. As availment/utilization of Cenvat credit was not admissible, rebate of duty paid was also not admissible. This ground alone is sufficient to reject the rebate claim of the party No.1.

Further in view of statement of Sh. Adishwar Jain @ Adish Jain Managing Director party No.1, who in his statement dated 12.10.2003, has stated that they had exported non alloy steel items and never exported any alloy steels items; that they never purchased alloy steel items from the market; that the practice adopted by them was that after purchasing non alloy items from the market, they used to take these goods to factory premises of Sundesh Springs Private Limited and there they used to re-pack the goods after processing in the factory

premises and exported the same showing them as goods of alloy steel; that they never exported the alloy steel items but exported only non-alloy steel items, declaring them as alloy steel items, intentionally, in order to avail higher DEPB benefits, it is well established that the goods, declared under the relevant ARE-1s on which the party has claimed rebate of duty, have not actually been procured, manufactured and exported from the premises of the party No.1. Rather cheap, substandard, non-alloy steel bars, rods, bright bars etc. had been procured manufactured and exported, the Commissioner (Appeals) should have taken cognizance of these facts well discussed in the OIO and appreciated the findings therein before allowing the appeal of the parties.

4.4 The Commissioner (Appeals) observed that the amount of excise duty, which is paid at the time of export, is, in fact, in the form of deposit, which is returned to the exporter after submission of proof that export has taken place. The Commissioner (Appeals) while observing this had totally ignored the fact that the party had paid duty out of the balance of cenvat credit not admissible to them. The supplier dealers and the party No.1 had not shown evidence of actual receipt of inputs. Further in the discreet investigations carried by the DRI against the parties, it has been found that the party was not actually manufacturing or procuring alloy Steel items. The Commissioner (Appeals) could have taken into account the findings of investigations before allowing the appeal of the party.

4.5 From the above, it is evident that the party had committed gross irregularities and committed fraud with the Govt. Exchequer. The Commissioner (Appeals) has also erred in not appreciating the spirit of the provisions of the law while deciding the present case. The provisions of the Cenvat Credit Rules, 2002 clearly provide that only that portion of the Cenvat credit can be utilized towards payment of duty on final products, which has been earned on duty paid inputs, which have been received in the factory for use in or in relation to manufacture of final products. Whereas in the present case, the party utilized Cenvat credit

which was not admissible to them as neither any duty had been paid by the manufacturers/suppliers of inputs thereof nor inputs were received in the factory of the party No.1 'and only bogus/fabricated invoices have been found to be generated. Therefore, the goods exported on payment of duty from fraudulently availed Cenvat credit cannot be treated as duty paid goods and thus no rebate is admissible to the party.

4.6 The recovery of erroneous refund provisions available under Section 11 A of the Act clearly stipulate-that in case, refund has been erroneously made, the recovery of the same can be made by issuance of show cause Notice within a period of one year five years as the case be. That is there is no bar with any pre-condition etc. for recovery of erroneous refund within the stipulated period provided it is proved that the refund (rebate in this case) has been erroneously made. In the instant case, it has been established during the investigations conducted by the DRI that the goods purportedly declared to have been exported under the relevant ARE-1 s on which the party No.1 has claimed rebate of duty, have not actually been procured, manufactured and exported from their premises. Rather cheap, substandard, non-alloy steel bars, rods, bright bars etc. have been procured, manufactured and exported The party No.1 & party No. 2 have deliberately/fraudulently mis-declared non alloy steel material as alloy steel with intent to claim in admissible rebate of duty in as much as no such alloy steel goods were received and manufactured by party No. 1 as clearly established during the investigations conducted by the DRI. The grant of rebate is subject to the condition that the goods are exported out of India against proper documents as prescribed and that the declarations made therein are true and correct in all respects. As already mentioned above party No.1, the claimant of the rebate has mis-declared the material facts, it is a clear cut case of erroneous refund (rebate in this case) meriting recovery under provisions of Section 11 A of the Act.

From the foregoing it follows that the said rebate of duty to the tune of Rs.44,40,546/- erroneously refunded to the party No. 1 was recoverable under the provisions of Section 11A of the Act Thus, the adjudicating authority has correctly ordered the recovery of the same under the provisions of Section 11 A of the Act.

4.7 The Commissioner (Appeals) has erred in setting aside penalty on party No.2 and Sh. Adishwar Jain, Managing Director Mis Sundesh Springs Pvt. Ltd, by holding that that penalty under Rule 209 A of erstwhile Central excise Rules,19944/Rule 26 of the Central Excise (No.2) Rules 20011 Central Excise Rules 2002 is imposable where any goods are liable to confiscation, and as there was no provision for penalty for issuing excise duty invoice without delivery of goods, is no penalty can be imposed on Party No.2 and & Sh. Adishwar Jain, Managing Director M/s Sundesh Springs Pvt. Ltd, 0-138, Focal Point, Phase-V, Ludhiana. The Commissioner (Appeals) has erred not in examining well the role of party No.2 and & Sh. Adishwar Jain, Managing Director M/s Sundesh Springs Pvt Ltd., in the whole incident They were not just involved in issuing excise duty invoice without delivery of goods, rather party No.2 has shown to exported those goods which had never been received by them and Sh. Adishwar Jain has indulged in bogus sale/purchase of alloy steels and has over-valued the export products. The bogus transactions of sale/purchase have been admitted by all, Shri Adish Jain, Prabhjot Singh, Raghubir Singh Dhiman and other key employees as discussed herein above. Further, M/s Girnar Impex Limited, Ludhiana and Mis Siri Amar Exports, Ludhiana have attempted to export goods, namely, non-alloy steel bars, rounds and rods etc. by willfully and intentionally mis-declaring their description/quality and value through Inland Container Depot, Tughalakabad/ Patparganj, New Delhi, with the intention to defraud the government by availing the undue benefit of DEPB and to claim higher rebate claims. In view of the above both party No.2 and Shri Adishwar Jain, Managing Director, M/s Sundesh

Springs Pvt. Ltd. has dealt with the impugned goods in such a manner which would had rendered them liable for penal action under Rule 26 of the Rules.

4.8 In the era of liberalization and open economy, total reliance has been placed on the assesses and they are enjoying various facilities such as self-removal of final products, self-assessment of duty, self-sealing of export consignments, self-certification, making payment of duty on monthly basis etc. In the present case also, the party was enjoying all these facilities, but got involved not only in taking Cenvat credit fraudulently but also in the utilization of the same towards payment of duty on the goods cleared for exports with the sole motive of getting it encashed by filing rebate claim with the department. The party No.1 has taken Cenvat credit in respect of the goods, which have never even come into existence and the question, of payment of duty thereon; transportation and receipt thereof in the factory of the party do not arise at all. The party has played a clear-cut fraud-with the Government Exchequer. Therefore allowing them the rebate of the duty paid from the fraudulently availed Cenvat credit would mean as to granting of blanket permission to the fraudsters to get involved in this type of illegal and unlawful practice of making money, which is totally contrary to the provisions of the law.

5. A Show cause notice was issued was issued to the respondent under Section 35EE to file their counter reply. They vide letter dated 5.9.11 submitted mainly that:

5.1 Except for Revision Application in Form EA.8 no other document like Order in Appeal, Order in Original and show cause notice which was basis for the dispute have been annexed. From the reading of the Revision Application, it cannot be ascertained as to whether grounds taken in it had been subject matter of the dispute. For instance, it has been attempted to be projected in Grounds of Application (mentioned as Appeal) that rebate was not admissible because credit

out of which duty was paid was not availed correctly but proceedings were not initiated for alleged wrong full taking or utilization of credit but the objection in the show cause notice was export goods have been overvalued. There is no mention in the Revision Application that orders of sanction of Rebate claims had not been reviewed. The respondent herein pray that the Department be directed to place all relevant documents on records so that issue is correctly appreciated.

5.2 As per sub Section (IA) of Section 35EE, the Commissioner of Central Excise may, if he is of the opinion that an order by Commissioner (Appeals) under Section 35A is not legal or proper, direct the proper officer to make an application on his behalf to the Central Government for revision of such order. No doubt, there is mention in the Application about exercise of such Powers by the Ld. Commissioner yet that direction or authorization has not been enclosed in the absence of which it is not possible to ascertain as on which basis he entertained an opinion that Order in Appeal is not correct or proper.

5.3 M/s Girnar Impex Ltd shown as Party No.2 were Merchant Exporters. They had exported the goods in the capacity as Merchant Exporter. Proof of export of those goods had been furnished on the basis of which the jurisdictional authority had sanctioned and paid Rebate claims to M/s Sudesh Springs Ltd. No irregularity was found in the rebate claims and Orders of sanction or the rebate claims were not reviewed meaning that those orders were considered legal and proper by the Commissioner, Central Excise having jurisdiction over the Asstt/Dy. Commissioner who had allowed the rebate claims. The Revision Application does not indicate as to how correctness of rebate claims could be questioned when rebate of only that amount had been sanctioned which had been paid as duty.

5.4 There is clear finding in Order in Appeal that there is nothing on record to suggest that any Cenvat Credit had been denied to the manufacturer, M/s Sundesh Springs Ltd, or there was proposal to deny the credit to them. He has

held that duty paid on export goods is to be refunded to the exporter. The Ld. Commissioner (Appeals) further held that rebate of those amounts has been sanctioned which had been paid as duty of excise on export goods, that alleged over valuation has no relevance in the context of rebate claim. He further held that amount of excise duty which is paid at the time of export is in fact in the form of deposit which is returned to the exporter after submission of proof that export *has* taken place. These findings have not been disputed but new ground that duty has been paid out wrongful credit has been adopted. This had not been basis at any stage and it cannot be accepted as it amounts to setting up a new case which is impermissible.

5.5 Perusal of the statement of Facts of the application Form E-A8 filed by the department would show that it has repeatedly been mentioned that the export goods were artificially overvalued. It has not been shown as to how it had connection with the rebate claims when correctness of those claims had not been disputed by way of review orders and rebate of only that amount was allowed which was paid as duty. There is no challenge anywhere that the amount of which rebates had been claimed or sanctioned was not deposited as duty. When rebate of only that amount has been sanctioned which was paid as duty, then circumstances like fraud or willful mis-statement did not exist in the relation to claim or sanction of rebate claims. The orders have not been reviewed. Thus there was no basis to find any fault in sanctioning of rebate claims and findings of the Ld. Commissioner that no amount is recoverable do not deserve to be interfered with and Department's application merits to be dismissed as not maintainable.

5.6 In the application filed by the department different impression that duty had been paid out of credit wrongfully taken is attempted to be projected. There are categoric findings in Order in Appeal that issue of wrongful Cenvat Credit was not the issue at any stage. Had the case been of wrongful credit then

proceedings under Cenvat Credit Rules would have been initiated and in that case appeal against those orders of Ld. Commissioner (Appeals) could lie to the Tribunal meaning that case Revision Application was not maintainable. The very fact that the department has filed Revision Application, it is proof of the fact that the dispute at no stage had been of irregular availment of credit. Even on facts there had been no irregular availment of credit.

5.7 There did not exist any basis for challenging the order of the Ld. Commissioner (Appeals) with regards to setting aside of penalty under Rule 26 provides for penalty upon a person who acquires possession or in any way concerned in transporting, removing, keeping, concealing, selling or purchasing or any other manner deals with any excisable goods which he knows or has reasons to believe are liable to confiscation under the Act or Rules. He has cited number of decisions holding that penalty may be imposable only where goods are liable to confiscation. Since goods had been exported and it is settled proposition that goods which had been exported cannot be held liable to confiscation so no penalty could be imposable. Even otherwise there were no goods liable to confiscation and no amount is otherwise recoverable from the manufacturer so no penalty under Rule 26 can be held imposable and on this basis the order of setting aside of penalty does not deserve to be interfered with.

6. Personal hearing scheduled in the case on 10.10.12, 6.12.12 and 19/20.2.13. Shri Vikrant Kackria, Advocate appeared on the respondent who reiterated the cross objection made at para (5) above.

7. Government has carefully gone through the relevant case records, and perused the impugned Order-in-Original and Order-in-Appeal.

8. On perusal of records, Government observes that applicant were engaged in the fraudulently availment of export incentives i.e. DEPB credit as well as

rebate of duty on exported goods by way of mis-declaration of goods made from non-alloy steel in the guise of alloy steel and also by overvaluing the export goods. Investigations of DRI also revealed that only invoices were issued by the suppliers without supply of any material. Since no duty was paid on the exported goods, show cause notice issued for recovery of erroneously granted rebate claim of Rs.4440546/- was adjudicated by Addl. Commissioner, Central Excise, Ludhiana. The adjudicating authority vide impugned order-in-original dated 4.5.10 confirmed the demand of erroneously sanctioned rebate of Rs.4440546/- with interest and imposed mandatory penalty of Rs.4440546/- on M/s Sundesh Springs Pvt. Ltd (Applicant No.1) and a penalty of Rs.200000/- on each of the applicants No.2 & 3. In appeal Commissioner (Appeals) allowed the appeal in favour of applicants holding the sanction of rebate claim as in order and legally correct. Now, applicant department has filed these revision applications on the grounds stated above.

9. Government notes that as per investigation carried by DRI, applicant No.1 was also engaged in fraudulent availemnt of Duty Entitlement Pass Book (DEPB) credits by resorting to misdeclaration of value and description of goods. Non-alloy steel bars, rods, bright bars etc. of value ranging from Rs.15/- to Rs.17/- per kg. were being exported in the guise of alloy steel forgings bars and rods, shafts, blanks etc. at the value of Rs.110/- to Rs.150/- per kg. They had shown export of alloy steel forgings, and the raw material purchase was merely paper transaction without actual receipt of inputs.

9.1 The adjudicating authority has observed in the finding of his impugned order-in-original No.40/CE/ADC/LDH/09 dated 4.5.10 as under:

"4.4 I find that Sh. Adishwar Jain @ Adish Jain Managing Director Noticee No.1, in his statement dated 12.10.2003, has stated that they had exported non alloy steel items and never exported any alloy steels items; that they never purchased alloy steel items

from the market; that the practice adopted by them was that after purchasing non alloy items from the market, they used to take these goods to factory premises of Sundesh Springs Private Limited and there they used to re-pack the goods after processing in the factory premises and exported the same showing them as goods of alloy steel; that they never exported the alloy steel items but exported only non-alloy steel items, declaring them as alloy steel items, intentionally, in order to avail higher DEPB benefits. He also admitted that alloy steel goods were never handled in the factory and that the value shown in the invoice was the. inflated value of the goods. The invoices with inflated value of the goods were being submitted to the Customs and banks in order to avail higher benefits of DEPB;, the invoices showing the actual value of the goods (non alloy steel) were sent to the consignee, separately, for production before the customs at Dubai. Sh. Adish Jain, further stated.that he had shown purchase of alloy steel items only on papers from M/s S.P. Industrial Corporation and no other dealer/manufacturer had supplied him any material of alloy steel. He admitted that the differential amount of actual value of goods and inflated value of exported goods was adjusted through hawala sources. Sh. Adish Jain was confronted with nine photo copies of letter heads of Mis Azhad Trading Company, P. O. Box 5403, Deira, Dubai. He admitted the recovery of these nine Photostat copies of letter heads from the drawer of his office table. On enquiry regarding the use of these documents, Sh. Adish Jain stated that he used these documents to prepare false export orders on computer. Sh. Adish Jain in his written statement dated 12.10.2003 also admitted the recovery of twelve stamps (rubber) from his office. On enquiry regarding their use, Sh. Adish Jain stated that these rubber stamps were used as per his convenience.

4.5 Sh. Prabhjot Singh Prop. of M/s. S.P. Industrial Corporation, Ludhiana, in his statement dated 11.10.2003 and 12.10.2003 admitted that as his financial position was not good in those days, so with an intention to make fast money, he issued bills in the name of M/s. Sundesh Springs Pvt Ltd., and M/s. Girnar Impex Limited, without supplying and alloy/non alloy steel items.

4.6 Sh. Rajesh Chopra production supervisor of M/s. Sundesh Springs Pvt limited, in his statement dated 11.10.2003 and 12.10.2003 has stated that, "no manufacturing

facility of any kind of alloy steel forgings or the like was undertaken at their premises and that there was no facility for the same; that as regards exports made in respect of alloy steel products, none of the products were manufactured in their factory; that from 01.09.2003, he was entering the receipt of alloy steel forgings in the incoming register as a paper transaction only on the instructions of Mr. Jha, their accounts manager; and that no material was received against these paper transactions; that no alloy steel scrap was there in their factory; that the manufacturing process in respect of alloy forgings, as declared by M/s Sundesh Springs Private Limited, in the declaration filed by them under rule 173 B of the erstwhile Central Excise Rules, 1944, effective from 01.04.2001 onwards, was incorrect; that there was no furnace installed in the operative part of the factory premises and as such the alloy steel forgings could not be heated/forged/machined/turned/grinded/shaped and cut etc; that the alloy steel bars/rounds/shafts etc. were never packed or repacked for export in their factory premises.

4.7 Sh. Raghubir Singh Dhiman S/o Sh. Kehar Singh resident of Mohalla Guru Nanak Nagar, Street No. I, 33 feet Road, Mundian Kalan, Ludhiana, in his statement dated 13.11.2003, who worked as Factory Manager with Noticee No.1 from March 1998 to 1st of August, 2003; had stated that during this period, they had never sold any alloy steel items to any of their buyers; that they had neither manufactured alloy steel bright bars, blanks or shafts etc. in the factory nor purchased alloy steel items from outside; that he himself was maintaining the incoming and outgoing register.

4.8 Sh. Davinder Singh Narang S/o Sh. Gurcharan Singh Narang, resident of 3432, MIG, Phase II, Urban Estate, Dugri, Ludhiana, in his statements dated 12.11.2003 and 13.11.2003, admitted: that he was a partner in Mis Simran bright bars and left the firm in march 2002; that the firm was engaged in the process of drawing iron and steel bars and used to buy Iron/Steel bars from rolling mill. That their firm has done job work and also sold drawn iron and steel bars to M/s Sundesh Springs Private Limited and that he used to look after all the firms dealing with M/s Sundesh springs private limited, that 90 % of the iron and steel bars, supplied by them to M/s. Sundesh Springs Private Limited after job work on sales basis were non alloy steel bars; that about 10 per cent of their

dealing with Mis Sundesh Springs Private Limited, were regarding alloy steel bars; He further admitted having supplied the false bills for sale of alloy steel bars to M/s Sundesh Springs Private Limited, without supplying any material and for the issue of these fictitious bills, he was getting a commission of Rs.250/- per tonne.

4.9 Sh. Rajesh Lakhanpal, Computer Operator, Noticee No.2 in his statement dated 12.10.2003, interalia stated that he was working with Mis Gimar Impex Limited, since 4th of August, 2002 as computer operator; and was looking after all the export related works of the above firm; he further stated that Mr. Adish Jain was using parallel sets of export invoices: these export invoices were in a set of two invoices of same serial numbers showing different value of goods exported, one copy was as per purchase order and the second was inflated.

4.10 Sh. Amarjit Singh, Accounts Manager in the firms of Sh. Adish Jain, in his statement dated 12.10.2003, stated that he was looking after the accounts work of the firms owned by Sh. Adish Jain namely M/s Sundesh Springs Private Limited, Mis Gimar Impex Limited and M/s Siri Amar Exports; that he was preparing the excise documents and the work related to deposit and withdrawal of the cash from the bank since 1.4.1997; He further stated that as per practice M/s S. P. industrial corporation, issued the bills in the names of M/s Gimar Impex Limited and M/s Sundesh Springs Private Limited showing sale of alloy and non alloy steel items but in reality no goods were sent by these firms and no material was received by M/s Gimar Impex Limited and M/s Sundesh Springs Private Limited against fake bills. In order to regularise the account of such transactions, the firms of Shri Adish Jain issued cheques in favour of the traders namely M/s S. P. Industrial Corporation, M/s P.J. Sales corporation and M/s Aayons (India). He further stated that the amount paid to firms of Prabhjot Singh in lieu of bogus purchases was taken back by Shri Adish Jain through self cheques signed by Prabhjot Singh in advance and such cheques were encashed by him (Amarjit Singh) as per the directions of Adish Jain. He further stated that sale of scrap by M/s Sandesh Springs to the firms of Prabhjot Singh were only on papers.

4.11 Further, I find that an enquiry with regard to all his past exports effected by the Noticee No.1 were conducted with reference to value and description at the port of import in Dubai and the Consul (Economic), Consulate General of India at Dubai, vide his office letter No. CE/IV/06/2003 dated 12.05.2004 reported the value declared before the Dubai Customs in respect of sample consignments, On perusal of the value declared before the Dubai Customs by the respective importers, it has been confirmed that the invoices supplied by Sh. Adishwar Jain to his foreign buyers were of much lower value than what was declared by Sh. Adishwar Jain before the Indian Customs. For example, Sh. Adish Jain has issued invoice No. 717 dated 4.10.2002 in respect of 21.490 M/Tons of cold drawn round bars valued at $7092. This invoice is further supplemented by a parallel invoice of same number, date and quantity wherein the commodity has been declared as "alloy steel bars and rods" and the value has been declared as $49805. This parallel invoice has been presented to Indian Customs in order to avail higher DEPB incentives by resorting to mis-declaration and over-valuation. The Consul (Economic), Consulate General of India at Dubai, after conducting the necessary enquiries, has informed that the invoice with the lower value has been presented at Dubai Customs for clearances.

4.12 I find that Sh. Adishwar Jain @ Adish Jain in his written statement as discussed above, has himself admitted, that the purchase shown by them of alloy steel items was only paper transaction and they inflated the value of goods exported by them to get higher incentives. This facts also gets confirmed from the statements of Sh. Prabhjot Singh Prop. of M/s. S.P. Industrial Corporation, Ludhiana, Sh. Rajesh Chopra production supervisor of M/s. Sundesh Springs, Sh. Raghubir Singh Dhiman S/o Sh. Kehar Singh, Factory Manager of Noticee No.1 Sh. Davinder Singh Narang S/o Sh. Gurcharan Singh Narang, resident of 3432, MIG, Phase II, Urban Estate, Dugri, Ludhiana., Sh. Rajesh Lakhanpal, Computer Operator, Noticee No.2 and Sh. Amarjit Singh, Accounts Manager in the firms of Sh. Adish Jain. Further from the inquiry conducted with respect to past exports effected by Noticee No.1, it has been confirmed that the invoices supplied by Sh. Adishwar Jain to his foreign buyers were of much lower value than what was declared before the Indian Customs.

4.13 From the foregoing discussions, I find that the Noticee No. 1 had fraudulently availed incentives including rebate of duty paid on so called Alloy Steel Forgings by fraudulently exporting Non Alloy Steel Forgings, at grossly over-priced invoices; that they had shown export of Alloy Steel Products the raw material purchase of which is fictitious paper transactions only, without the actual receipt of inputs. The actual price of the said exported goods was in the range of Rs. 15/- to Rs. 17/-, whereas the price for the same was declared at the rate of Rs.110/- to Rs. 150/- per kg. approximately to defraud the Govt. revenue. The goods, declared under the relevant ARE-1s on which the Noticee has claimed rebate of duty, have not actually been procured, manufactured and exported from the premises of the Noticee No.1. Rather cheap, substandard, non-alloy steel bars, rods, bright bars etc. have been procured manufactured and exported, therefore the rebate of duty is not admissible to the Noticee No.1. Thus I find that the said rebate claims of duty to the tune of Rs.44,40,546/- erroneously refunded to the Noticee No.1 are liable to be recovered under Section 11A of the Act along with interest under Section 11AB by invoking extended period of limitation as the same has been claimed by the Noticee fraudulently and by suppressing the material facts from the knowledge of the department as discussed above and as such the Noticee No.1 are also liable for penalty under Rule 25 of Central Excise (No.2), Rules 2001/Central Excise Rules 2002 as applicable during the relevant periods read with Section 11AC of the Act.

4.14 Besides this I find that the co-noticees i.e. Noticee No.2 i.e. M/s Girnar Impex Limited, K-201, Kismat Complex, G.T.Road, Millerganj, Ludhiana, merchant exporter, Sh. Adishwar Jain, Managing Director of M/s Sundesh Springs Pvt. Ltd. & M/s Girnar Impex Limited, M/s S.P.Industrial Corporation, M/s P.J.Sales Corporation, M/s Aay Sons (India), Sh.Prabhjot Singh, Prop. of M/s S. P. Industrial Corporation, M/s P. J. Sales Corporation and M/s Aay Sons (India), all situated at 18, Kot Mangal Singh, Gill Road, Ludhiana, Sh. Davinder Singh Narang Sio Sh. Gurcharan Singh Narang, resident of 3432, MIG, Phase II, Urban Estate, Dugri, Ludhiana; Ex Director of M/s. Girnar Impex Ltd and partner of Ms. Simran Bright Bar Industries, K-15, Focal Point, Phase-VII, Ludhiana and M/s Simran Bright Bar Industries, K-15, Focal Point, Phase VII, Ludhiana are also liable to penal action under Rule 26 of the Central Excise (No.2) Rules 2001/Central Excise Rules 2002 as they have actively involved with Noticee No. 1 in bogus transactions of

sale/purchase and procurement of documents pertaining to sale purchase of alloy steel forgings."

10. Government notes that the adjudicating authority has clearly held in his order that exported goods were not duty paid and therefore no rebate claim was admissible. The Commissioner (Appeals) has observed that there is nothing on record to suggest that wrongly availed cenvat credit has been denied to the applicant or there is any proposal to deny the same. Commissioner (Appeals) has held the initial sanction of rebate claim as valid and in order mainly on the ground that there was no demand cum show cause notice for recovery of wrongly availed cenvat credit. In this regard Government observes that in adjudication proceeding, the fraudulent availment of export incentive including impugned rebate claim has been established, on the basis of investigations conducted by DRI. The receipt of raw material is admitted as only paper transaction. It is also admitted by applicants that only non-alloy steel items were exported. In this situation, it is quite clear that cenvat credit was wrongly availed on the basis of bogus/fake invoices. The exported goods were also highly overvalued. The export products cannot be treated as duty paid since duty was paid from wrongly & fraudulently availed cenvat credit. As such, the goods exported were not duty paid goods. As such, Government holds that there is no legal infirmity in the order-in-original dated 4.5.10 and demand of erroneously sanction rebate claim along with interest were rightly confirmed and penalties were also imposed as per law.

10.1 The rebate of duty was granted of duty paid on exported goods under Rule 18 of the Rules read with Notification No. 40/2001-Central Excise (NT), dated the 26th June 2001.

a) Rule 18 of the Central Excise Rules, 2002 reads as under:

" Where any goods are exportecl, 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, and fulfillment of such pr6'cedure, as may be specified in the notification. "

Relevant provisions of 19/09-Central Excise (NT), dated the 6.9.04 issued under Rule 18 ibid read as under:

In exercise of the powers conferred by rule 18 ofthe Central Excise (No.2) Rules, 2001, the Central Government hereby directs that there shall be granted subject to conditions and limitations specified in paragraph 2 and procedures specified in paragraphs 3 and 4, -

(a) rebate of whole of the duty paid on all excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), except mineral oil products falling under Chapter 27 of the First Schedule to the Central Excise Tetitt Act, 1985 (5 of 1986) exported as stores for consumption on board an aircraft on foreign run, on their exportation to any country except Nepal and Bhutan;

(b) .....

(2) **Conditions and limitations:-**

(i) that the excisable goods shall be exported after payment of duty, directly from a factory or warehouse except as otnetwise permitted by the Central Board of Excise and Customs by a general or special order;

The said statutory provision stipulated that rebate of duty paid on exported goods is to be rebated. In this case as discussed in forgoing paras the exported goods cannot be treated duty paid, and therefore, the rebate claims are not

admissible under rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE (NT) dated 6.9.04.

10.2 The recovery of cenvat credit under the provision of Cenvat Credit Rules is altogether a separate legal proceeding. The department has to take action under the relevant provisions of Cenvat Credit Rules read with Central Excise Act/Central Excise Rules. But non-initiation of such action against the party cannot be a reason to allow rebate claim when no duty is paid on exported goods. Commissioner (Appeals) has erred in setting aside this demand and penalty on this ground and also erred in allowing rebate in violation of provisions of rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE (NT) dated 6.9.04.

10.3 Government notes that Apex Court in the case of Omkar Overseas Ltd. [2003 (156) ELT 167(SC)] has held in unambiguous terms held that rebate should be denied in cases of fraud. In Sheela Dyeing and Printing Mills (P) Ltd. [2007 (219) ELT 348 (Tri.-Mum)] the Hon'ble CESTAT, has held that any fraud vitiates transaction. This judgement has been upheld by the Hon'ble High Court of Gujarat. In another judgement in the case of Chintan Processors [2008 (232) ELT 663 (Tri. Ahm), the Hon'ble CESTAT while deciding the question of admissibility of Credit on fraudulent invoices has held as follows:

> *"Once the supplier is proved non-existent it has to be held that goods have not been received. However, the applicant's claim that they have received goods but how they have received goods from a non-existent supplier is not known."*

11. In view of above discussions, Government sets aside the impugned orders-in-appeal dated 29.3.11 and restores the impugned orders-in-original dated 4.5.10.

12. The revision applications thus succeed in above terms.

13. So ordered.

(D.P.SINGH)
Joint Secretary (Revision Application)

Commissioner of Central Excise Commissionerate
Ludhiana
Central Excise House,
Rishi Nagar,
Ludhiana (Punjab)

(भागवत शर्मा/Bhagwat 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

Copy to

1. M/s Girnar Impex Limited, K-201, Kismat Complex, G.T.Road, Millerganj, Ludhiana
2. M/s Sundesh Springs Pvt. Ltd., D-138, Focal Point, Phase-V, Ludhiana
3. Shri Adishwar Jain, Managing Director, Sundesh Springs Pvt. Ltd., D-138, Focal Point, Phase-V, Ludhiana
4. Commissioner of Central Excise (Appeals), CR Building, Plot No. 19, Sector-17-C, Chandigarh.
5. Additional Commissioner of Central Excise, Ludhiana (Pb.)
6. Shri Vikrant Kackria, Kackria & Associates, House No.509, Sector-7, Panchkula (Haryana)
7. PS to JS(RA)
8. Guard File.
9. Spare Copy

ATTESTED

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