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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 31.5.13

Order No. 449 / 2013-CX dated 30-05-2013 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 Orders-in-Appeal No. M-I/RKS/125/2011 dated 31.03.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-I
Applicant	:	M/s Besto Creation, Surat
Respondent	:	Commissioner of Central Excise, Mumbai-I

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ORDER

This revision applications is filed by the applicant M/s Besto Creations against orders-in-appeal No. M-I/RKS/125/2011 dated 31.03.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to Orders-in-Original passed by the Asstt. Commissioner (Rebate), Central Excise, Mumbai-I

2. Brief facts of the case are that the applicant filed three rebate claims which were initially sanctioned by the original authority vide impugned order-in-original. The department reviewed the impugned order-in-original and filed appeal before commissioner (Appeals) on the ground that the in respect of one of the claim of amount of Rs 69,587/-, the goods were exported by JNPT, Nhava Sheva however, the rebate claim for such export was sanctioned by Asstt. Commissioner (Rebate), Central Excise, Mumbai-I beyond their jurisdiction. Commissioner (Appeal) decided the case in favour of department.

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

3.1 Applicant submits that there is no allegation except the jurisdiction for filing Rebate claim. This happened because along with two other claims applicant filed this claim also before the Maritime Commissioner, Central Excise, Mumbai-I, due to oversight. The Maritime commissioner, Central Excise, Mumbai-I sanctioned the claim of the applicant. There is no intention of the applicant to claim from the wrong place. It was happened unknowingly. The Rebate claim is genuine and properly sanctioned after going through all the original documents submitted by the applicant and duty payment certificate received from the Jurisdictional range Supdt. Further in this connection Applicant rely on the Order of Hon. Tribunal in the case of Tafe Limits vs. Commissioner of Central Excise, Chennai - 2008(227) E.L.T. 80 (Tri. Chennai) – Rebate of duty – Exports- Territorial Jurisdiction – Order of original authority sanctioning rebate

of duty not being found to be defective except for lack of jurisdiction, Sanctioning of refund by different Assistant Commissioner involves only administrative adjustment of funds disbursed as rebate for statistical purposes – Order of original authority restored – Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act,1944.

3.2 It is only a procedural mistake and may be condoned. Otherwise all other particulars as well as documents tally. The adjudicating authority sanctioned the claim after going through the duty payment certificate received from the jurisdictional Range as well as after going claim. The OIO is proper and correct and needs to be upheld.

3.3 The Applicant rely on following Government of India orders passed for condoning non-mandatory Procedural provisions relying on Hon. Tribunal Order in respect of:

(a) M/s. Birla VXL 1988 (99) ELT 387, T.I. Cycles 1993(66) ELT 497

(b) M/s. Banner International Order No.255/07 dated 27.04.2007

(c) M/s. Vipul Dye Chem Ltd., Order No. 873/2006 dated 29.06.2007

(d) M/s. Britannia Industries Ltd., Mumbai. Order No. 380-382/07 dated 29.06.2007.

5. Personal hearing scheduled in this case on 05-03-2012 was attended by Shri R.V. Shetty, Advocate on behalf of the applicant who reiterated the grounds of revision application. Nobody attended the hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case record and perused the impugned order -in-original and order-in-appeal.

7. The applicant rebate claims were initially sanctioned by the original authority. Department reviewed the impugned order-in-original and filed appeal before commissioner (Appeals) on the ground that in one of the case, the applicant exported the goods from JNPT, Nhava Sheva, however, the rebate claim for such export was

sanctioned by Asstt. Commissioner (Rebate), Central Excise, Mumbai-I beyond their jurisdiction. Commissioner (Appeals) decided the case in favour of department. Now, the applicant has filed this Revision Application on grounds mentioned in para (3) above.

8. Government observes that para 8 of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. Government observes that in impugned cases, the goods were exported from JNCH, Nhava Sheva and in such cases the Maritime Commissioner, Raigarh Central Excise, who exercises jurisdiction over exports made through JNCH, Nhava Sheva or jurisdictional Assistant Commissioner will have jurisdiction. The applicant, as an exporter should have the knowledge of proper authority with whom the rebate claim was required to be filed. However, the applicant filed rebate claim with the authority, which was not having jurisdiction to sanction the impugned rebate claim. In this case, ACCE Mumbai-I has erred in sanctioning the said claim without having jurisdiction to sanction the said claim. He should have transferred the rebate claim to ACCE Raigad. In view of this position the sanction of said claim is rightly set aside on the ground of jurisdiction. However, Asstt. Commissioner, Central Excise, Mumbai-I has found the claim otherwise in order on merits. So, the applicant cannot be deprived of legitimate benefit of rebate since department is also equally responsible for sanctioning rebate claim without any jurisdiction. As such the ACCE Mumbai-I is directed to transfer the said rebate claim to the jurisdictional Maritime Commissioner i.e. Assistant Commissioner, Central Excise, Raigad, who will consider the said rebate claim on merit. The said claim is to be treated filed in time since the rebate claim was originally filled with ACCE Mumbai-I within ones year's time limit as stipulated in

section 11 B of the Central Excise Act, 1944. The impugned order-in-appeal is modified to this extent.

9. Revision Application is disposed off in terms of above.

10. So, ordered.

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

M/s. Besto Creations,
476-478, Belgium Square,
Opp. Lenier Bus Stand,
Ring Road,
Surat.

(भागवत शर्मा/Bhsgwat 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

GOI Order No. 449 /12-CX dated 30.05.2013

Copy to:

1. The Commissioner of Central Excise, Mumbai-I, 115, New Central Excise Building, M. K. Road, Opp. Churchgate Station, Mumbai -400 020.
2. The Commissioner of Central Excise & Customs (Appeals), Mumbai-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400 007.
3. Shri R.V. Shetty, Advocate, 101, Sterling Court 'E' – Wing, Opp. Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri (E), Mumbai- 400 093.
4. Guard File.
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ATTESTED

31/5

(B.P. Sharma)
OSD (RA)