

REGISTERED  
SPEED POST



F.No.195/910-936/11-RA  
F.No.195/287-310/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue.....31/5/13

ORDER NO. 450-500/13-CX DATED 31-05-2013 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 the orders-in-appeal passed by the  
Commissioner (Appeals) Central Excise, Meerut-II as  
reflected in column No.3 of table in para 1 of this order

Applicant : M/s Arora Aromatics, Moradabad

Respondent : Commissioner, Customs & Central Excise, Meerut-II.

\*\*\*\*\*

**ORDER**

These revision applications are filed by the applicants M/s Arora Aromatics, Moradabad against the orders-in-appeal passed by the Commissioner Customs & Central Excise (Appeals), Meerut-II as detailed below:

Sl. No	Revision Application No.	Revision application filed against Order-in-appeal No. & Date
(1)	(2)	(3)
1	F.No.195/910-936/11-RA	No.232-258-CE/MRT-II/2011 dated 28.6.11
2	F.No.195/287-310/12-RA	No.545-568-CE/ MRT-II/2011 dated 14.11.11

2. Brief facts of the cases are as under:

2.1 Brief facts of the cases in R.A.No.195/910-936/11-RA with reference to orders-in-appeal No. 232-258-CE/MRT-II/2011 dated 28.6.11 are as under:

The 27 rebate claims were initially sanctioned by the original authority. Department filed appeals before Commissioner (Appeals), who decided the said appeals vide order-in-appeal No.404-430-CE/MRT-II/2008 dated 31.12.08. M/s Arora Aromatics, the applicant filed revision applications before Joint Secretary (Revision Application) who vide GOI Revision Order No.379-390/11-Cx dated 19.4.11 remanded the cases back to Commissioner (Appeals) for fresh decision on merit as Commissioner did not have the power to remand the cases. After consideration of all the submissions, Commissioner (Appeals) allowed the appeals of the department and hence denied the rebate claims. Now, applicants have filed these revision applications against the impugned orders-in-appeal.

2.1 Brief facts of the cases in R.A.No.195-287-310/12-RA with reference to orders-in-appeal No. 545-568-CE/MRT-II/11 dated 14.11.11 are as under:

The 24 rebate claims were rejected by the original authority, Assistant Commissioner of Central Excise, Moradabad. The claimant exporter applicant filed appeals before Commissioner (Appeals) who allowed the said appeals, vide order-in-appeal No.319-342/09 dated 27.11.09. Being aggrieved with said orders, department filed revision applications before Central Government under Section 35EE of Central Excise Act 1944. The Joint Secretary (Revision Application) vide GOI Revision Order No.1119-1169/11-Cx dated 12.9.11 remanded the case back to Commissioner (Appeals) on the ground that order-in-original passed by Commissioner of Central Excise, Meerut-II as detailed in para 6 of said revision order, was not before Commissioner (Appeals) while deciding the said appeals. Thereafter, Commissioner (Appeals) vide order-in-appeal dated 14.11.11 rejected the appeal of the claimants/applicants. The applicants have now filed these revision applications before Central Government under Section 35EE of Central Excise Act 1944.

3. Being aggrieved by the impugned orders-in-appeal, the applicants have filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following common grounds:

3.1 The applicants submit that the statutory provision contained in Rule 18 provides for sanction of rebate of the duty paid on excisable goods in case any goods are exported after payment of duty. The sanction of rebate claim is subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification. The applicants submit that after scrutiny of the rebate claim the jurisdictional authority in the case of R.A.NO.195/910-936/11 was satisfied that conditions, limitations including the

procedure have been followed by the applicants, therefore after being satisfied the claims were sanctioned. Thus in the subject rebate claims the dispute is not in relation to conditions, limitations and procedure followed by the applicants. The revenue appeals was filed by the department on the ground that Cenvat credit availed by the applicants was under investigation and while the rebate was sanctioned. This was the position when the revenue appeal was taken up for decision by the Commissioner (Appeals) initially. Subsequently on issuance of order of remand by the Joint Secretary (Revision), further proceedings in the matter of investigation has resulted in issuance of notice to the applicants.

3.2 In the present case the matter relates to proprietary of rebate claim sanctioned by the jurisdictional Assistant Commissioner as per provisions of rule 18 of Central Excise Rules, 2002 read with CBEC circulars and supplementary instructions. There is no dispute regarding infringement of any provisions contained in rule 18 or the relevant CBEC circulars or the supplementary instructions. The dispute is regarding fraudulent avilment of Cenvat credit which is governed by provisions of Cenvat Credit Rules, 2004. The export has been undertaken after payment of duty. Proper procedure of export has been followed and is not being disputed. In the circumstances question arises in the matter is whether fraudulent avilment of Cenvat can be considered as a reason to deny rebate which is governed by separate provisions of rule 18 of Central Excise Rules, 2002 and whether the provisions of fraudulent Cenvat can override the provisions of rule 18 in the matter governed exclusively by provisions of rule 18. In Para 6 of the order, the Commissioner (Appeals) has rightly pointed out that the issue before him is whether the sanction of the rebate claim was premature. This question has not been answered in the order though taken up initially. Therefore the Commissioner (Appeals) has erred by proceeding to decide the case without deciding whether the sanction of rebate claim was premature.

3.3 The revenue had protected not only the Cenvat allegedly by fraud but had also included the amount of rebate sanctioned to the Applicants as demand. Thus since revenue had already protected the alleged fraudulent Cenvat and had also sanctioned the rebate therefore the Commissioner (Appeals) should have not taken the notice in to consideration. Thus before deciding upon the revenue appeal it was imperative on the part of the Commissioner (Appeals) to decide whether the sanction of rebate claim at the original stage of investigation was premature keeping in mind also the fact that revenue including sanctioned rebate has been protected. The Commissioner (Appeals) has failed to do so and has decided the issue otherwise before deciding the maturity of the issue though his office himself took up maturity of the sanction of rebate in the very initial stage of deciding the case. Therefore the order is bad in law.

3.4 The applicants also places reliance on other CBEC circulars cited below which specifically asked and directs the proper officer to sanction rebate claims without resorting to delay. Sanction of rebate has also 'been allowed in cash in case duty is paid out of Cenvat. CBEC has not distinguished between Cenvat and fraudulent Cenvat. Had the intent of the circular been to deny rebate in case of fraud the circular would have clarified the situation. In the absence of such clarification rebate allowed by the Assistant Commissioner was fair and justified. The CBEC circular also directs the proper officer to sanction rebate at the earliest without delay. Had the intent been to deny rebate in case of wrong or fraudulent availment of Cenvat the circular would have definitely put restriction or and directed to deny rebate for such cases where Cenvat is in dispute. The said circulars which are binding on the department and being relied upon by the applicants are as under:

- (i) Circular No.687/3/2003-CX dated 3.1.2003
- (ii) Circular No. 670/61/2002-CX dated 1-10-2002

- (iii) Circular No. 24/87 dated 6-5-1987
- (iv) Instruction dated 03.04.2007 issued under F. No. 209/11/2005-CX-6 (CBEC)

3.5 The applicants submits that it is crystal clear from the Board's clarification that the documents listed only should have been considered for sanction of rebate claims and not the Cenvat documents which are not part and parcel of rebate. Moreover CBEC circular dated 03.01.2003 and 01.10.2002 are crystal clear which hold that rebate claim is to be paid in cash and within three months. In both these circulars there is no reference that in case of dispute of fraudulent Cenvat rebate should be held up or be denied. There is clear cut directive to pay interest on rebate if the sanction is made after three months. CBEC has also clarified that rebate be sanctioned even in case of duty paid on inputs in area based exemptions units like in J&K. In the circumstances there was no reason to deny the rebate. Thus the order of Assistant Commissioner granting rebate was fit, proper and justified.

3.6 Applicants submit that the issuance of the notice upholds their contentions that issue of fraudulent Cenvat is a separate issue governed by provisions of Cenvat Credit Rules, 2004. There are separate provisions under Central Excise law which deals with cases related to fraudulent availment of Cenvat and there also exists separate mechanism to recover such fraudulent availment of Cenvat. If it is alleged that Cenvat credit has been availed fraudulent the mechanism allows the department to deny Cenvat recover interest and impose penalty but there is no mechanism to deny rebate. Therefore the setting aside the orders-in-original is absolutely wrong, not legal and without authority of law.

3.7 The Applicants further assert their submission by example of normal business transactions. In normal business transactions between a manufacturer

and the buyer if Cenvat is considered fraudulent by the department a notice to show cause is issued to the manufacturer for disallowance and recovery of Cenvat credit of duty but the manufacturer is not forced to either not to recover the duty from the buyers nor the amount recovered from the buyer representing the duty portion is asked to pay to the department before decision of the notice and further decisions through appellate proceedings. Contrary to the above in the present case the duty paid by the Applicants as per provisions of rule 18 is rebated by the department as the same cannot be recovered from the foreign based buyer. The purpose of granting of rebate is to compensate the manufacturer of the duty paid but not recovered from the foreign buyer. By denying the same the Commissioner (Appeals) has deprived the Applicants what was due to them as transaction value of the export goods (cost paid by the buyer (+) duty to be rebated by the department. It would be noticed that besides demanding fraudulent Cenvat alleged to have been availed by the Applicants. Notices have also been issued demanding rebate of Rs.67118555/-. The said amount of rebate demanded from the Applicants includes the amount of Rs.20379237/- involved in these revision applications.

3.8 Order of Commissioner (Appeals) has added to multiple demands created on same issue. Applicants have already enclosed copy of notice to show cause bearing C.No.IV-CE(9)CP/Arora Aromatics/M-II/08/06/Pt. 17884 dated 28.11.2008 issued by Commissioner, Central Excise, Meerut-II. It would be noticed that in the notices entire amount of Rs.158777553/- taken as Cenvat credit of duty by the Applicants during the disputed period and that amount of Rs.67118555/- already sanctioned rebate claims has been demanded from them. Thus the amount availed as Cenvat for payment of duty claimed as rebate has already been covered in the above show cause notices. Therefore denial of rebate amounts to creating two different demands against the same credit taken by the Applicants in the each case. The duty paid and Cenvat are one and the

same therefore when Commissioner, Central Excise has demanded Cenvat credit of duty taken as credit duty paid out of such Cenvat and claimed as rebate by the Applicants cannot be demanded separately. Thus the demand of sanctioned rebate are nothing but duplicity of same amount.

3.9 The Commissioner of Central Excise, Meerut-II has decided on the notice dated 28.11.2008 vide order-in-original No.83-105/Commr/M-II/2009 dated 29.1.10. In the said order besides denying cenvat credit of Rs.158777553/- taken as cenvat credit of duty during the period June 2005 to 15.7.08 demand against sanctioned rebate of Rs.67118555/- has also been confirmed. Thus revenue has safeguarded its right through order dated 19.1.10. Applicant has filed an appeal before CESTAT against the said order.

3.10 Notwithstanding the above submissions, the Applicants further submit that in case the Joint Secretary (Review) also take a view that rebate claim of duty paid from the fraudulent Cenvat credit is not permissible the present Revision Application be kept on record pending decision on the issue of admissibility of Cenvat credit by competent authority so as to avoid multiplicity of demands against the Applicant and parallel proceedings against the Applicant before two different forum for the same issue i.e. admissibility of Cenvat credit and acceptability of duty paid from such Cenvat credit for sanctioning rebate claim. The Joint Secretary (Review) may take up the revision application for decision only after the main issue of admissibility of Cenvat credit is finally decided. However it is added that till the present application of the Applicant is decided stay be granted from recovery of rebate.

4. Personal hearing was scheduled on 27.6.12. The applicants vide letter dated 27.6.12 requested for adjournment of hearing. The next hearing fixed on



21.2.13 was attended by Shri D.D.Mangal, Assistant Commissioner of Central Excise, Moradabad on behalf of respondent department. He reiterated the findings of Commissioner (Appeals) and submissions made in their letter C.No.V(30)Appeal/Balaji/MBD/29/09/1395 dated 21.2.12. Shri S.K.Mathur, Advocate and Shri S.C.Dabral, Consultant appeared for hearing on 21.2.13 but again requested for short adjournment. As such next hearing was fixed on 20.3.13. The applicant did not attend hearing fixed for 20.3.13. As such, Government takes up these cases for decision on the basis of available case records.

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

6. On perusal of records Government notes that Commissioner (Appeals) has held all the rebate claims as inadmissible and passed the impugned orders-in-appeal. The applicant exporters have filed revision applications on the grounds stated in para (3) above.

7. The applicants have mainly contended that department has protected the revenue i.e. Cenvat Credit as well as rebate sanctioned by issuing show cause notice C.No.CE(9)/CP/Arora Aromatics/M-II/08/06/Pt.1/17884 dated 28.11.08 so that rebate claim should be sanctioned; that as per CBEC circulars cited the rebate is to be allowed in cash within 3 months and there is no reference in said circular dated 3.1.03 and 1.10.02 to hold rebate claims in case of dispute of availment of cenvat credit; that recovery of wrongly availed cenvat credit is a separate issue governed by provision of Cenvat Credit Rules 2004 and it cannot be a basis to reject rebate claims; that Commissioner of Central Excise, Meerut-II vide order-in-original No.83-105/Commr/M-II/2009 dated 29.1.10 has confirmed the cenvat credit demand of Rs.158777553/- and also confirmed the demand of

erroneously sanctioned rebate claim of Rs.67118555/- and the said amount of confirmed demand of Rs.67118555/- includes the amount of rebate claims of Rs.20379237/- involved in these revision applications and that in view of confirmed demand which have not attained finality, the rebate claims should be allowed.

8. The Assistant Commissioner of Central Excise, Moradabad vide letter dated 21.2.13 has confirmed that the amount involved in these revision application was paid from the wrongly availed cenvat credit for which show cause notice dated 28.11.08 was issued by Commissioner of Central Excise, Meerut-II. The demand of cenvat credit and erroneously sanctioned rebate claims of Rs.67118555/- is confirmed by Commissioner of Central Excise, Meerut-II vide order-in-original No.83-105/Commr/M-II/2009 dated 29.1.10.

9. Government notes that in these cases the duty was paid on exported goods from the cenvat credit and department after conducting investigations in the matter issued a show cause notice dated 28.11.08 as stated above for recovery of said wrongly availed cenvat credit and erroneously sanctioned rebate claims. The said demands are now confirmed by Commissioner, Meerut-II vide order-in-original dated 29.1.10. As such it has been held that cenvat credit was availed fraudulently and rebate claims were also sanctioned erroneously.

10. The governing statutory provisions of grant of rebate are contained Rule 18 of Central Excise Rules, 2002 which reads as under:

"Rule 18: Rebate of Duty: Where any goods are exported, 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, any fulfillment of such procedure, as may be specified in the notification."

The provision of said rule stipulate that rebate of duty paid on excisable goods exported is admissible. The notification No.19/04-CE(NT) dated 6.9.04 issued under rule 18, stipulates the condition and procedure to be followed for availing rebate claim. It also stipulates that duty paid on exported goods is to be rebate subject to compliance of procedure and condition laid down. In these cases, payment of duty was in dispute and now vide order-in-original No.83-105/Commr/M-II/2009 dated 29.1.10 passed by CCE, Meerut-II, the demand of wrongly availed Cenvat credit and erroneously sanctioned rebate claims is confirmed. So it is clearly proved that said export goods were non duty paid since duty was paid from fraudulently availed cenvat credit. As such said duty paid cannot be treated as duty under the provisions of Central Excise Act/Rules. Once it is held that no duty was paid on exported goods, there is no question of allowing rebate of duty under rule 18 of Central Excise Rules 2002 read with Notification No.19/04-CE(NT) dated 6.9.04. The contentions raised by applicant are not legally tenable since no duty is paid on exported goods and therefore there is no entitlement of rebate claim. The circulars cited by applicant will be applicable when payment of duty on exported goods are not in dispute. In this case duty paid from irregularly availed cenvat credit cannot be treated as payment of duty and therefore said circulars are not applicable in these cases. The said order-in-original dated 29.1.10 is still in force as it is no set aside by CESTAT/High Court till date as informed by CCE, Meerut-II vide letter C.No.V(15)Rev/OIA/M-II/549/2010/8064 dated 30.5.13 and therefore the rebate claims stand rightly rejected by Commissioner (Appeals).

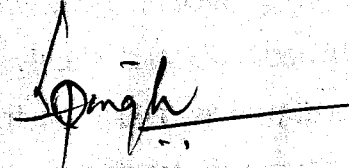
11. Government notes that Apex Court in the case of Omkar Overseas Ltd. [2003 (156) ELT 167(SC)] has held in unambiguous terms held that rebate

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.

12. In view of above circumstances, Government finds no legal infirmity in the impugned orders-in-appeal and therefore upholds the same.

13. Revision applications are thus rejected in terms of above.

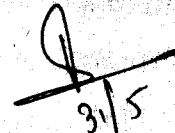
14. So, ordered.



(D.P.SINGH)

JOINT SECRETARY (REVISION APPLICATION)

M/s Arora Aromatics,  
2 KM Stone, Sambhal,  
Moradabad  
Uttar Pradesh



(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

GOI Order no. 450-500/13- G dt 31.05.13

F.No.195/910-936/11-RA  
F.No.195-287-310/12-RA

Copy to:

1. Commissioner of Customs & Central Excise, Meerut-II, Meerut.
2. Commissioner (Appeals) Central Excise, Meerut-II, Meerut.
3. Assistant Commissioner, Customs & Central Excise, Division-Moradabad.
4. Shri S.K.Mathur, Advocate
- ✓ 5. PA to JS to (RA)
6. Guard File
7. Spare Copy

ATTESTED



(B.P.SHARMA)  
OSD (REVISION APPLICATION)

... ..

... ..

... ..

... ..