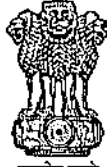


SPEED POST  
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GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India  
8th Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F.No.198/74-81/2013-RA  
F. No.198/96 & 96A/2013-RA | 1332

Date of Issue: 15.03.2018

ORDER NO. 49-58 /2018-CX (WZ)/ASRA/MUMBAI DATED 15.03.2018  
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR  
MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY  
TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL  
EXCISE ACT, 1944.

Applicant : Commissioner of Central Excise, Mumbai-III.

Respondent : M/s Aarti Industries Ltd, 71, Udyog Kshetra, 2<sup>nd</sup> Floor, Mulund-  
Goregaon Link Road, Mumbai - 400080.

Subject : Revision Applications filed, under Section 35EE of the Central  
Excise Act, 1944 against the following Order-in-Appeals passed by  
the Commissioner of Central Excise (Appeals), Mumbai -III :-

- (1) Order in Appeal No. BC/58/M-III/2013-14 dated 21.05.2013.
- (2) Order in Appeal No. BC/59/M-III/2013-14 dated 21.05.2013.
- (3) Order in Appeal No. BC/60/M-III/2013-14 dated 21.05.2013.
- (4) Order in Appeal No. BC/61/M-III/2013-14 dated 21.05.2013.
- (5) Order in Appeal No. BC/62/M-III/2013-14 dated 21.05.2013.
- (6) Order in Appeal No. BC/63/M-III/2013-14 dated 21.05.2013.
- (7) Order in Appeal No. BC/64/M-III/2013-14 dated 21.05.2013.
- (8) Order in Appeal No. BC/65/M-III/2013-14 dated 21.05.2013.
- (9) Order in Appeal No. SDK/135/M-III/2013-14 dated 22.08.2013
- (10) Order in Appeal No. SDK/136/M-III/2013-14 dated 22.08.2013



ORDER

These ten revision applications are filed by the Commissioner of Central Excise, Mumbai – III (hereinafter referred to as “the applicant”) against the following Order-in-Appeals passed by Commissioner of Central Excise (Appeals), Mumbai-III.:-

**RA. No.198/74-81/13-RA (Eight Applications)**

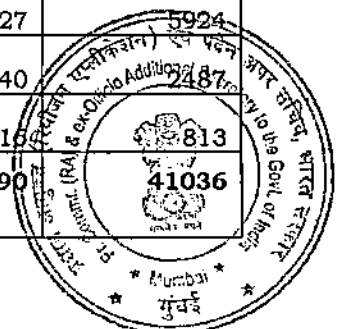
- (1) Order in Appeal No. BC/58/M-III/2013-14 dated 21.05.2013.
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- (8) Order in Appeal No. BC/65/M-III/2013-14 dated 21.05.2013.

**RA. No.198/96 & 96 A/13-RA (Two Applications)**

- (9) Order in Appeal No. SDK/135/M-III/2013-14 dated 22.08.2013.
- (10) Order in Appeal No. SDK/136/M-III/2013-14 dated 22.08.2013.

2. The issue in brief is that the respondent, M/s Aarti Industries Ltd, a Merchant Exporter situated at 71, Udyog Kshetra, 2<sup>nd</sup> Floor, Mulund-Goregaon Link Road, and Mumbai 400080 had procured excisable goods from manufacturers for exports. The Respondents exported the goods so procured and filed rebates claims. Since the assessable value on the ARE-1 was found to be more than the corresponding FOB value on the Shipping Bill, the rebate claims were short sanctioned to the extent as detailed in the table below:-

Sr. No.	Order-In-Original No & Date	Rebate Claimed (in Rs.)	Rebate Allowed (in Rs.)	Rebate short paid (in Rs.)
1.	006R/VKJ/DC(RC)/M-III/12-13 dated 02.04.2013	415296	413458	1838
2.	284R/VKJ/DC(RC)/M-III/12-13 dated 25.02.2013	516153	506996	9157
3.	276R/VKJ/AC(RC)/M-III/12-13 dated 19.02.2013	315180	307099	8081
4.	011R/VKJ/DC(RC)/M-III/12-13 dated 04.04.2013	232863	230971	1892
5.	287R/VKJ/DC(RC)/M-III/12-13 dated 28.02.2013	118656	117798	858
6.	279R/VKJ/AC(RC)/M-III/12-13 dated 22.02.2013	494345	489580	4765
7.	278R/VKJ/DC(RC)/M-III/12-13 dated 19.02.2013	192026	186805	5221
8.	277R/VKJ/DC(RC)/M-III/12-13 dated 19.02.2013	264751	258827	
9.	91R/SKM/DC(RC)/M-III/13-14 dated 29.07.2013	108027	105540	
10.	68R/SKM/DC(RC)/M-III/12-13 dated 19.06.2013	226929	226116	
	<b>TOTAL</b>	<b>2884226</b>	<b>2843190</b>	<b>41036</b>

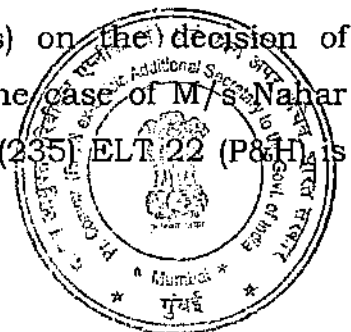


3. Being aggrieved by the above mentioned Order-in-Originals the respondents filed appeals before Commissioner of Central Excise (Appeals), Mumbai-III. The Commissioner (A) allowed the appeals of the respondents by allowing credit of the amount of rebate short paid in the Cenvat Accounts of the concerned manufacturer vide the impugned Order-in-Appeals.

4. Being aggrieved by these Orders in Appeal, the Department filed aforementioned Revision Applications against the impugned Order in Appeals on following grounds :

- 4.1. The respondents are not manufacturers but are Merchant Exporters and had procured goods from manufacturers on the value mentioned in the ARE-1 and invoice of the manufacturers.
- 4.2. The ARE-1's/Invoices shows that the goods were sold by the manufacturers to the respondents at value which was higher than FOB value and had charged Central Excise duty on such higher value.
- 4.3. As per Section 12B of the Central Excise Act, 1944, it can be presumed that the duty shown on the Invoices paid by the manufacturer to the Government and the same was passed on to the respondents and hence the manufacturers have recovered the entire cost of the goods sold alongwith the duty paid by him from the respondents.
- 4.4. In the impugned orders the Commissioner (Appeals) have allowed the excess duty paid as credit in the Cenvat accounts of the manufacturers which will amount to 'Unjust Enrichment' as the manufacturers have already recovered the said excess duty from the respondents.
- 4.5. Such credit in the Cenvat Account of the manufacturers is not rebate but refund under Section 11B of the Central Excise Act, 1944. The Board vide Circular No. 53/90 dated 26.09.1990 clarified that refund claims even if otherwise admissible should not be sanctioned where the competent officer is satisfied that the manufacturers/importers have passed on the duty burden to the customers.
- 4.6. Reliance placed by Commissioner (Appeals) on the decision of Hon'ble Punjab & Haryana High Court in the case of M/s Nahar Industrial Enterprises Ltd reported in 2009 (235) ELT 22 (P&H) is





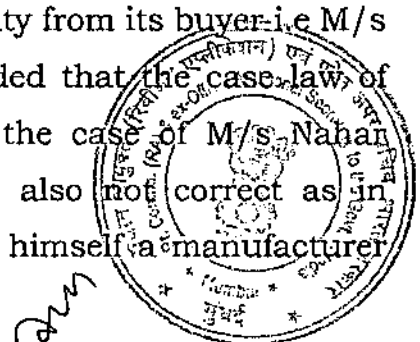
not correct as the in that case the claimant was himself a manufacturer and not the merchant exporter.

5. A personal hearing in the case was held on 26.02.2018. Shri A.N. Kamble, Supdt. Div.IV GST, Navi Mumbai Commissionerate, appeared on behalf of the applicant . Shri Prasannan S Namboodiri, Advocate and Shri D.B. Bhalerao, Consultant appeared on behalf of the respondent. The respondent did not file cross objection to Revision applications and submitted that the manufacturers have not taken credit of the excess paid duty in their Cenvat Account as per the impugned orders. The applicant reiterated the submissions filed and pleaded that a judicial decision may kindly be taken.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Originals and Order-in-Appeals. Since the issue involved in all the ten applications is identical, these ten applications are being taken up for adjudication together in this order.

7. Government observes that the adjudicating authority had rejected a part of the rebate claims filed by the respondents on the ground that the assessable value on the ARE-1 was found to be more than the corresponding FOB value on the Shipping Bills. On the other hand the Commissioner (Appeals) relying on the Government of India Order No. 1568-1595/2012-CX dated 14.11.2012 in the case of M/s Cipla Ltd, Hon'ble Apex Court judgement in the case of M/s Belapur Sugar and Allied Industries Ltd – 1999 (108) ELT 9 (SC), Hon'ble High Court judgement in the case of M/s Nahar Industrial Enterprises Ltd reported in 2009 (235) ELT 22 (P&H) and Government of India Order No. 81-104/12-CX dated 03.02.2012, allowed credit of the amount paid in excess of duty on FOB value in the Cenvat credit accounts of the concerned manufacturers.

8. Government observes that in all the revision applications the applicant department has contended that the Commissioner (Appeals) has allowed the excess duty paid as credit in the Cenvat accounts of the manufacturer which appears to be incorrect as it will lead to giving additional benefit to the manufacturer and will amount to unjust enrichment as in all these cases the manufacturer has already recovered the said excess duty from its buyer i.e M/s Aarti Industires Ltd. (the respondent). It is also pleaded that the case law of Hon'ble Punjab and Haryana High Court given in the case of M/s Nagan Industrial Enterprises Ltd.[2009(235)ELT-22(P&H)] is also not correct as in that case M/s Nahar Industrial Enterprises Ltd. was himself a manufacturer

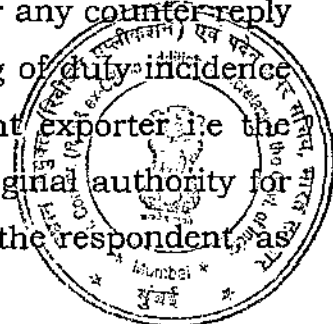


and not the merchant exporter who had not passed on the duty incidence to any other person, whereas in this case M/s Aarti Industries Ltd. (the respondent), the manufacturer and the exporter are different and the manufacturer has recovered the entire duty amount from the exporter. In view of the above the respondent department in all the revision applications has opined that the proper order could be to credit the excess duty paid by the manufacturer in the Customer Welfare fund under Section 12 C(2) (a) of Central Excise Act, 1944.

9. Government observes that while deciding a similar issue Revisionary Authority vide Order Nos. 160-225/2014-CX, dated 28-4-2014 In Re : Cipla Ltd.[reported in 2015 (328) E.L.T. 742 (G.O.I.)] observed as under :-

*"The applicant department has challenged the impugned Orders-in-Appeal and contended that manufacturers have already recovered excess duty from its buyer M/s. Cipla Ltd., Mumbai and allowing re-credit of excess paid amount in the Cenvat credit account of manufacturer will lead to additional benefit to the manufacturer which will amount to unjust enrichment. As such department has argued that excess paid amount should be credited in the consumer welfare fund under Section 12 C (2)(a) of Central Excise Act, 1944, M/s. Cipla Ltd. has filed counter written reply and contended that M/s. Cipla Ltd. is a manufacturer as well as merchant exporter, that they procured goods on loan licence basis from various manufacturers and they are principal manufacturers as raw material and packing material is supplied by them. M/s. Cipla Ltd. has claimed that there is no question of passing the duty incident as duty is paid by them only. The factual position is to be verified by the original authority from records. Government notes that in these cases claimant is a merchant exporter and duty on exported goods is paid by manufacturer. So, the re-credit of excess paid amount is to be allowed as ordered by Commissioner (Appeals), only if the provisions of Section 12B of Central Excise Act, 1944 are complied with. The impugned Orders-in-Appeal are modified to the extent.*

10. Following the ratio of the aforementioned case law, Government observes that the respondent has neither filed any cross objection nor any counter reply to the revision applications and in order to find out passing of duty incidence by the manufacturer in the present cases to the Merchant exporter i.e. the respondent, Government remands the cases back to the original authority for verification of records and the credit of excess duty paid by the respondent, and

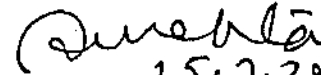


ordered by the Commissioner (Appeals), will be allowed only if the provisions of Section 12 B of Central Excise Act, 1944 are complied with, failing which the said excess paid amount should be credited in the consumer welfare fund under Section 12C(2)(a) of Central Excise Act, 1944.

11. The impugned Orders-in-Appeal are modified to the above extent.

12. These revision applications are thus disposed of in terms of above.

13. So ordered.


  
15.3.2018

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

ORDER No. 49-58/2018-CX (WZ)/ASRA/Mumbai DATED 15<sup>th</sup> March, 2018.

To,  
The Commissioner of CGST & Central Excise,  
Navi Mumbai, 16<sup>th</sup> Floor, Satra Plaza,  
Palm Beach Road, Sector-19D,  
Vashi, Navi Mumbai - 400705.

**True Copy Attested**

  
15-3-18  
एस. आर. हिरुलकर  
S. R. HIRULKAR  
(A.C.)

Copy to:

1. M/s Aarti Industries Ltd, 71, Udyog Kshetra, 2<sup>nd</sup> Floor, Mulund-Goregaon Link Road, Mumbai - 400080.
2. The Deputy/Assistant Commissioner (Rebate), GST & CX Navi Mumbai Commissionerate.
3. Sr. P.S. to AS (RA), Mumbai.
4.  Guard File.
5. Spare Copy.

