

REGISTERED
SPEED POST



F.No. 195/885/13-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

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

Date of Issue...22/8/15

Order No. 50/2015-CX dated 20.08.2015 of the Government of India passed by Smt. Rimjhim Prasad, Joint 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.BC/119/M-III/2013-14 dated 27.6.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III.

Applicant : M/s Cadbury India Ltd., Thane

Respondent : Commissioner of Central Excise, Mumbai Zone-III

ORDER

This Revision Application has been filed by M/s Cadbury India Ltd., Thane (hereinafter referred to as applicant) against the Order-in-Appeal No. BC/119/M-III/2013-14 dated 27.6.2013 passed by the Commissioner of Central Excise (Appeals) Mumbai Zone-III with respect to Order-in-Original passed by the Deputy Commissioner of Central Excise (Appeal), Wagle-I Division, Mumbai-III.

2. Brief facts of the case are that M/s. Cadbury India Ltd. used 'Cocoa beans' as inputs in the manufacturing process of Chocolates. The process required that first they crush Cocoa beans. While crushing Cocoa beans, shells get separated and then Cocoa butter and powder are obtained. The applicant sell these cocoa-shells in open market without payment of duty by availing benefit of exemption under Notification No.15/2005-CE dated 02.05.2005. The applicant imported the Cocoa beans and took credit @ 4% of Additional Customs Duty. The applicant had not maintained separate account of inputs for exempted as well as dutiable goods as required under Rule 6(2) of the Cenvat Credit Rules, 2004. Therefore, Show Cause cum Demand Notices dated 21.03.12 and 17.12.12 were issued for the recovery of amount equal to 5% of the value of the exempted goods i.e. cocoa shells. The said notices later culminated into the impugned Order-in-Original No.138-139/2012-13/VKJ/DC/W-I/M-III dated 20.02.2013, wherein duty of Rs.241580/- was confirmed along with applicable interest and penalty of amount equivalent to duty confirmed was also imposed.
3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who upheld the confirmation of duty demand and interest but reduced penalty to Rs. 50,000/-.
4. Being aggrieved with the impugned Order-in-Appeal, the applicant has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before Central Government on various grounds.
5. Subsequently, the applicant vide their letter dated 25.5.2015 requested for withdrawal of this Revision Application on the following ground.
 - 5.1 That they have been informed by the jurisdictional Superintendent vide a letter dated 17.09.2014 to make payment of confirmed duty and penalty amount as they have wrongly filed the said Application before the Revisionary Authority and that in fact the appeal against the captioned Order lay before the Hon'ble CESTAT.

5.2 That accordingly, they have filed Appeal No. E/89756/14-Mum before the CESTAT, WZB, Mumbai together with an application for condonation of delay being E/COD/93309/15-Mum.

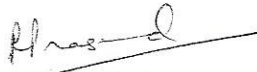
5.3 That they have been directed by the Hon'ble CESTAT to withdraw the Revision Application.

6. Accordingly, the case was fixed for personal hearing on 13.7.2015 and 22.7.2015. Hearing held on 22.07.2015 was attended by Shri Abhishek Upadhyay, Sr. Executive (Taxation) on behalf of the applicant wherein they reiterated their request for withdrawal of Revision Application and also submitted copy of COD Application.


7. Government observes that the applicant during pendency of their Revision Application also filed an appeal against the impugned Order-in- Appeal in the Hon'ble CESTAT. They have also stated to have filed an application for condonation of delay before the Tribunal. Subsequently, they have requested for withdrawal of the present Revision Application as they have been directed to do so by the Hon'ble CESTAT.

8. Government notes that the applicant has not given any cogent reason as to why the original application was filed before the Revisionary Authority. Appeal against the same Order-in-Appeal cannot be made before two authorities on the same issue and filing of appeal before two authorities may amount to forum shopping. However, considering the interest of justice and the request made by the Applicant and without going into the aspect of time limit, maintainability and merits of the case, the Revision Application is dismissed as withdrawn and disposed off accordingly.

9. So, ordered.


(RIMJHIM PRASAD)
Joint Secretary to the Government of India

M/s Cadbury India Ltd.,
1st Pokharan Road
Off Eastern Express Highway,
Thane-400604.

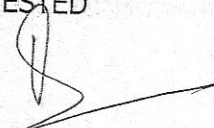
ATTESTED

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

GOI Order No. 50/2015-CX dated 20.08.2015

Copy to:-

1. The Commissioner of Central Excise, Mumbai-III, 4th Floor, Vardaan Sankul, MIDC, Wagle Industrial Estate, Thane (West)-400604.
2. The Commissioner of Central Excise (Appeals), Mumbai-III 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614.
3. The Deputy Commissioner of Central Excise ~~(Appeals)~~, Wagle-I Division, Mumbai-III.
4. PA to JS (RA).
5. Guard File.
6. Spare Copy.

ATTESTED


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