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F.No.198/462/11-RA
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...4/6/13.

Order No. 508 /2013-CX dated 03.06.2013 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 order-in-appeal No. PKS/551/Bel/2010 dated 30.3.11 passed by Commissioner of Central Excise (Appeals), Mumbai-III
Applicant	:	Commissioner of Central Excise, Mumbai-III
Respondent	:	M/s Cadila Healthcare Ltd., Ahmedabad

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ORDER

This revision application is filed by the Commissioner of Central Excise, Mumbai-III against order-in-appeal No. PKS/551/Bel/2010 dated 30.3.11 passed by Commissioner of Central Excise (Appeals), Mumbai-III with respect to order-in-original passed by Deputy Commissioner (Rebate), Central Excise, Mumbai-III. M/s Cadila Healthcare Ltd. is the respondent in this case.

2. Brief facts of the case are that M/s Cadila Healthcare Ltd., the respondent had exported the excisable goods under ARE-1 No.123/09-10 dated 26.12.2009 and filed rebate claim of Rs.3,89,324/- along with shipping bill. On scrutiny of the said rebate claim, it was noticed that the said shipping bill did not indicate ARE-1 No.123/09-10 dated 26.12.09. Therefore show cause notice was issued to the appellant. It was alleged in the said notice that the goods mentioned in the ARE-1 No.123/09-10 dated 26.12.09 was not exported. Subsequently, the rebate claim was rejected by the adjudicating authority vide impugned order-in-original.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner of Central Excise (Appeals) who allowed the same.

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 mainly on the ground that the respondent failed to produce the original copy of shipping bill to the satisfaction of original authority which shows doubt about genuineness of the claim.

5. A show cause notice was issued to the respondent under Section 35EE of Central Excise Act 1944 to file their counter reply. The respondent vide their

letter dated 7.1.2012 mainly stated that order-in-appeal being legal and proper, may be upheld.

6. Personal hearing scheduled in this case on 5.3.13 was attended by Shri Manoj Kumar, Vice President on behalf of respondent, who stated that order-in-appeal being legal and proper, may be upheld. Nobody attended bearing on behalf of applicant department.

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

8. Government observes that the rebate claim of Rs.3,89,324/- was rejected by original authority on the ground that detail of impugned ARE-1 No.123/09-10 dated 26.12.2009 were not appearing on the relevant shipping bill and also that the respondent failed to submit original copy of shipping bill. However, Commissioner (Appeals) decided the case in favour of respondent. Now the applicant department has filed this revision applications on the grounds stated in para (4) above.

9. Government observes that Commissioner (Appeals) in impugned order has observed that the respondent produced original copy of shipping bill at the time of personal hearing and the ARE-1 No.123/09-10 was found to be mentioned in the shipping bill, at the bottom of page No.(5) of the shipping bill. This factual verification carried out by Commissioner (Appeals) has not been controverted by the department in their grounds of revision application. As such, finding of Commissioner (Appeals), which is based on factual record, is required to be upheld.

10. In view of above discussion, Government do not find infirmity in order of Commissioner (Appeals) and hence, upholds the same. Revision Application is thus rejected being devoid of merit.

11. So ordered.

(D P Singh)
Joint Secretary (Revision Application)

Commissioner of Central Excise Mumbai-III
4th Floor Vardaan Trade Centre, MIDC
Wagle Industrial Estate,
Thane (West) - 400604

(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. 508 /13-CX dated 03.06.2013

Copy to:

1. M/s Cadila Healthcare Ltd., 417-419, 420 NH No. 8-1, Sarkhej-Bavla Highway, N.H.No.8A, Moraiya, Tal. Sanad, Distt. Ahmedabad-382 210.

2. Commissioner of Central Excise & Customs (Appeals-I) , Central Excise Bhavan, Near Polytechnic, Ambawadi, Ahmedabad – 380 015.

3. The Deputy Commissioner (Rebate) Central Excise, Mumbai-III, 3rd Floor, Floor Vardaan Trade Centre, MIDC, Wagle Industrial Estate, Thane (West) - 400604

4. Shri JC Patel, Advocate, C/o M/s Cadila Healthcare Ltd., 417-419, 420 NH No. 8-1, Sarkhej-Bavla Riad,, Vill. Moraiya, Tal. Sanad, Distt. Ahmedabad-382 210.

5. Guard File.

6. PS to JS (RA)

7. Spare Copy

ATTESTED

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