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SPEED POST

F.No. 195/464/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue 5/6/13

Order No. 512 /13-cx dated 4-6-2013 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.

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| Subject | : | Revision Application filed, under section 35 EE of the Central Excise, 1944 against the Order-in-Appeal No. SB/140/TH-I/11 dated 07-04-2011 passed by Commissioner of Central Excise, (Appeals), Thane. |
| Applicant | : | M/s Indian Dyestff & Chemicals Mfg. Co., W-25, MIDC, Ph-II, Dombivli, District Thane. |
| Respondent | : | The Commissioner of Central Excise, Commissionarate, Thane-I. |

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## ORDER

This revision application is filed by M/s Indian Dyestff & Chemicals Mfg. Co., Thane against the Order-in-Appeal No. SB/140/TH-I/11 dated 07-04-2011passed by Commissioner of Central Excise (Appeals), Mumbai Zone-I with respect to Order-in Original passed by The Additional Commissioner of Central Excise, Thane-I.

2. Brief facts of the case are that applicant are holding Central Excise registration for manufacturing of synthetic organic dyes. The applicant filed application for remission of duty under Rule 21 of Central Excise Rules, 2002, on the raw materials, semi finished / finished goods, lost in the floods on 26.7.2005. On scrutiny of the claim, it was observed that - (i) the applicant had not produced documentary evidence regarding entry of the damaged / post stock of goods entered in the daily stock register, (ii) For claiming remission of duty on finished goods, the applicant were required to reverses the input credit along with interest on the inputs used in the finished goods destroyed, as per CBEC Circular No. 800/33/2004.CX dated 1.1 0.2004, issued under F. No.267/22/2002-CX.8, (iii) The Rule 21 provides for remission of 'duty payable on goods, and not on raw materials and semi finished goods. Therefore, the Additional Commissioner Central Excise, Thane-I vide his impugned Order-in-Original rejected the claim on above mentioned grounds.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who upheld the Order-in-Original, and rejected the appeal.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The event on 26.07.05 was worst in the history of Mumbai when a strong wind coupled with storms and flood entered the whole town and its Suburbs. The level of water was as high as 10'- 15 'ft and stayed in factory premises for more than

24 hours. The Commissioner of Central Excise (Appeals) has not appreciated the fact that this event was an Act of God as covered by Rule 21 of Central Excise Rules 2002.

4.2 The main objection of the Additional Commissioner of Central Excise Thane -1 while rejecting the application for remission of duty dated 14.09.06 was that for claiming remission of duty as per Board Circular 800/33/2004 C.E. dt. 01.10.04 assessee has to reverse input credit along with interest in the raw material used in the manufacture of finished goods; however in the instant case applicant have not reversed Cenvat Credit interest in furnace oil used for manufacture of finished goods as well as semi finished goods.

4.3 The Applicant stated that they reversed the input credit on raw material used in manufacture of goods lost become unfit for consumption marketing and following documentary evidence were submitted to the Supdt. Central Excise Kalyan vide his letter dt. 14.04.10 and also enclosed with the Appeal to Central Excise (Appeals) Mumbai Zone -1 as under :-

a) The Cenvat on Inputs amounting to Rs. 218023/- and also paid interest amounting to Rs. 72838/- separately by GAR -7 Challan.

b) Cenvat on Input of Furnace Oil amounting to Rs. 7724/- and also paid interest for delay amounting to Rs.3990/- separately by GAR -7 Challan.

c) Cenvat on Input on Furnace Oil used in manufacture amounting to Rs.2885/- and also paid the interest amounting to Rs.1653/- separately by GAR -7 Challan.

4.4 The Commissioner (Appeals) Central Excise Mumbai Zone -1 has incorrectly interpreted the various information and statement and copies of Books of Accounts submitted by the applicant and appended following table with his order :-

| Sr. No. | Description of finished goods | Qty as per panchnama and shown in claim (kg.) | Qty as per letter dt. 06-07-2007 of National Insurance Co. Ltd. (in Kgs.) | Remarks |
|---|---|---|---|---|
| 1 | Rhodamine B -540 | 550 | 182.00 | This quantity has been shown as opening balance in RGI. |
| 2 | Rhodamine B - 500 | 12225 | 4230.00 | |
| 3 | Rhodamine BR | 4450 | 1500.00 | |
| 4 | Malachite Green | 4560 | 2100.00 | |

From the above table the Commissioner of Central Excise (Appeals) has wrongly inferred that there is a substantial difference in the quantity claimed for remission of duty and the actual quantity for which the claim was accepted and settled by Insurance company. Actually, there is no difference or contradiction in the various statement/ information submitted by the applicant to the Excise Authorities, Police Panchnama and Insurance Company. Column 3 of above table shows that quantity of finished goods in existence as opening stock before the event of Natural Calamity and floods is shown correctly in Finished Goods Register RG 1, Police Panchnama dt. 10.08.05 and letter dt. 10.08.05 to Deputy Commissioner of Central Excise Kalyan. This quantity does not indicate quantity" shown in claim" but infact is the quantities of opening stock on the date of flood. Column 4 of above table correctly shows quantity loss and destroyed by natural cause and became unfit for consumption or for marketing. This is correctly shown as the quantity on which remission is claimed and is also verified by the Surveyor of the Insurance Co.

4.5 This quantity tallies with the quantity in the said letter of National Insurance Company as well by the differential quantity of opening stock as on 26.07.05 (Date of natural cause- flood) and the quantity recovered after reprocessing. Hence there is no contradiction. There is a apparent misunderstanding in interpreting information contained in Finished Goods Register RG-1, Police Panchnama, applicant letter to Deputy Commissioner of Central Excise, Kalyan and letter of Insurance Co.

4.6 The Commissioner of Central Excise (Appeals), Mumbai Zone -1 mentioned in his order that the very fact that quantity of goods was salvaged and that were not lost or fully destroyed. Hence is not covered by provision of rule 21 of Central Excise

Rules 2002. However above provision of Rule 21 for Remission of Duty covers not only the goods "lost or destroyed by natural cause or unavoidable accident" but also "the goods which are claimed by manufacturer as unfit for consumption or for marketing, at any time, before removal, he may remit the duty payable on such goods".

4.7 It has been wrongly mentioned by the Commissioner of Central Excise (Appeal) Mumbai Zone-I that applicant have not produced any evidence to show goods were actually entered in RG 1 at the time of flood. The fact of the matter is that the quantity of finished goods were correctly entered in Finished Goods Stock Register RG 1 as opening stock on date of flood and also quantity salvaged after reprocessing. The differential quantity is claimed as quantity lost and verified by Surveyor of National Insurance as mentioned in letter dt. 06.07.07

4.8 The Commissioner of Central Excise (Appeals) Mumbai Zone-1 has erroneously mentioned in Para 8 of his order that the applicant have neither in the initial claim nor in subsequent correspondence, had quantified the exact amount of duty involved in the damaged/ lost goods to be remitted. The applicants have infact offered the information of the amount of remission claimed during personal hearing but, the Commissioner (Appeals) advised to submit the same in writing, which the applicant did vide his letter dt. 17.03.11 as per copy enclosed duly acknowledged by the Office of Commissioner Central Excise (Appeals) Mumbai Zone-I.

4.9 Along with said letter dtd. 17-03-2011, we submitted following statement showing finished goods lost in floods on July 26, 2005.

| Sr. No. | Name of the Item | Qty. of goods affected by flood | Qty. of finished goods salvaged | Qty of finished goods lost | Value Rs. | Central (16.32% on goods lost )Remission claimed |
|---|---|---|---|---|---|---|
| 1 | Rhodamine B 540% . | 550 Kgs | 368 | 182 Kgs | 55510.00 | 9059.00 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 2 | Rhodamine B 500% | 12225 Kgs | 7995 | 4230 Kgs | 1120950.00 | 182939.00 |
| 3 | Rhodamine BR | 4450 Kgs | 2895 | 1555 Kgs | 167940.00 | 27408.00 |
| 4 | Malachite Green | 4560 Kgs | 2405 | 2155 Kgs | 424535.00 | 69284.00 |
| | | | | | | 288690.00 |

From the above letter and the statements appended with this letter (as reproduced above), it is clear that the applicant have explained the entire matter clearly, transparently and beyond any doubt.

5. Personal hearing scheduled in this case on 04-03-2013 was attended by Shri R.N.Gupta, Proprietor & Shri Sanjay Gupta, Manager on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of deparmtnet.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government observes that the applicant's remission application was rejected by original authority mainly on grounds that they failed to reverse cenvat credit taken on inputs and also that they did not produce documentary evidences regarding entry of damaged goods. Commissioner (Appeals) upheld impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that as per pleading of applicant in this revision application, they have reversed cenvat credit availed on inputs and furnace Oil along with interest under GAR-7 challans. Under such circumstances, Government finds that if the cenvat credit involved in inputs used in manufactures of finished goods, which got damaged in flood has been reversed, then the remission claim cannot be rejected. However this claim of applicant regarding reversal of cenvat credit on inputs needs to be verified by the original authority from the original records to determine its correctness.

9. Government observes that appellate authority in his findings observed that there is substantial deferences in quantity claimed for remission of duty and the actual quantity for which the claim was accepted and settled by the insurance company. In this regard, the applicant has contended that actually there is no difference or contradiction in the various statement/information submitted by then to the excise authority, police panchnama and insurance companies. The applicant has illustrate their factual details by way of following table.

| Sr. No. (1) | Name of the Item (2) | Qty. of goods affected by flood (3) | Qty. of finished goods salvaged (4) | Qty of finished goods lost (5) | Value Rs. (6) | Central (16.32% on goods lost )Remission claimed (7) |
|---|---|---|---|---|---|---|
| 1 | Rhodamine B 540% . | 550 Kgs | 368 | 182 Kgs | 55510.00 | 9059.00 |
| 2 | Rhodamine B 500% | 12225 Kgs | 7995 | 4230 Kgs | 1120950.00 | 182939.00 |
| 3 | Rhodamine BR | 4450 Kgs | 2895 | 1555 Kgs | 167940.00 | 27408.00 |
| 4 | Malachite Green | 4560 Kgs | 2405 | 2155 Kgs | 424535.00 | 69284.00 |
| | | | | | | 288690.00 |

The applicant stated that they have actually claimed remission of duty involved on goods lost in floods as shown in column (5) of the above table, which tallies with quantity settled by the insurance company. On perusal of National Insurance company letter dtd. 06-08-2007, Government observes that the quantity settled by the insurance company for insurance claim tallies with quantity mentioned in column (5) of the above said table. Hence, the observation of appellate authority regarding substantial difference quantity on which remission was claimed and quantity as settled by insurance company is not sustainable. However, the factual verification in this regard is also required to be done by original authority on the basis of original documents. On verification, if the claim of applicant is found correct, the request for remission of duty is to be considered in accordance with law.

10. In view of the above discussions, Government sets aside the impugned Order and remands the case back to the original authority, to decide the same afresh after carrying out verification as mentioned in above paras. A reasonable opportunity of hearing is to be afforded to the parties.

11. Revision Application is disposed off in above terms.

12. So, ordered.

(D.P. Singh)
Joint Secretary to the Govt. of India

M/s Indian Dyestff & Chemicals Mfg. Co.,
W-25, MIDC, Ph-II,
Dombivli, District Thane.

ATTESTED

(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

Order No.512/13-Cx dated 04-06-2013

Copy to:

1. The Commissioner of Central Excise, The Commissioner of Central Excise, Thane-I, 4th Floor, Navprabhat Chamber, Ranade Road W), Mumbai-28.
2. The Commissioner of Central Excise (Appeals), Meher Building, D.S. Line. Opp. Chowppaty, Mumbai-400 007.
3. Shri R.N.Gupta, Proprietor & Shri Sanjay Gupta, Manager, C/o M/s Indian Dyestff & Chemicals Mfg. Co., W-25, MIDC, Ph-II, Dombivli, District Thane.
4. PS to JS (RA)
5. Guard File.
6. Spare Copy

ATTESTED

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(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)