<u>REGISTERED</u>
<u>SPEED POST</u>

<u>F.Nos. 195/1043-1048/11-RA & 195/1228-1244/11-RA</u>

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........01/7/13

ORDER NO. **<u>576-598/13-Cx</u>** DATED **<u>27-06-2013</u>** 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	:	Order in Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the orders-in-appeal nos. as mentioned in para 1 passed by Commissioner of Central Excise (Appeals-II),Mumbai Zone-II
APPLICANT	:	M/s Aarti Industries Ltd., Mumbai.
RESPONDENT	:	Commissioner of Central Excise , Customs & Service Tax, Raigad.

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ORDER

These revision applications are filed by M/s Aarti Industries Ltd., Mumbai against the orders-in-appeal passed by Commissioner of Central Excise (Appeals-II) as detailed in the following table:-

S.No.	RA No.	Against O-I-A No./Date	Rebate amount rejected (Rs.)
1.	195/1043-1048/11	184-189/RGD/11 dt. 10.08.2011	58368
2.	195/1228-1244/11	251-267/RGD/11 dt. 29.09.2011	189739

2. Brief facts of the case are that the applicants exported the goods on payment of duty under rebate claim in terms of Rule 18 of Central Excise Rules, 2002 and filed rebate claims. The original authority sanctioned the claims upto the extent of duty paid on the FOB value of exported goods accepting the said value as transaction value as per section 4 of Central Excise Act, 1944. The rebate of duty paid on freight and insurance expenses incurred beyond port of export was rejected since duty on exported goods was not required to be paid on CIF value.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeals.

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 It is submitted that duty has been paid by applicant on the assessable value indicated in the ARE-1 which is proper. The value indicated in the shipping bills is for

customs purpose and not for payment of excise duty. The clarification is given in para 4.1 of chapter 8 of CBEC's Excise Manual of Supplementary Instructions.

4.2 It is submitted that there is no dispute that the manufacturer exporter has paid the duty and the goods were exported. The para no.3 of the Board Instructions No. 510/06/2000-Cx dated 03.02.2000 clearly states the Maritime Commissioner should sanction the complete rebate even though the duty has been paid in excess.

4.3 It is submitted that the jurisdiction to determine the correct value of goods cleared from our factory is with the jurisdictional officers of the factory and not with the officers of Maritime Commissionerate. The applicant has cleared the goods by preparing ARE-1 and also excise invoice which indicates the quantum of duty payable on the basis of certain value indicated in ARE-1. The same has been indicated in the ER-1 return. The authority at the factory has considered the amount as duty and therefore it is submitted that the Maritime Commissionerate cannot alter the nature of payment and not consider as duty.

4.4 It is submitted that Rule 18 of Central Excise Rules speaks of "rebate of duty paid on the excisable goods" and "duty paid on materials used in the manufacture of goods" and not of duty payable. Further Notification No. 19/2004-CE(NT) dated 6.9.2004 issued under rule 18 of the Central Excise Rules 2002 for granting rebate of duty for exports also speaks about duty paid and not on duty payable.

4.5 If the said excess amount is denied as rebate, then that means same was not liable to include in the assessable value and therefore duty was not liable to be paid on the same. In the case of Sri Bhagirath Textiles Ltd. 2006 (202) ELT 147 (GOI) the GOI has permitted to the respondents to take back the Cenvat Credit which is related to Central Excise duty paid on CIF value of the impugned goods. As such they may be allowed re-credit in their Cenvat account of said excess paid duty.

5. Personal hearing scheduled in this case on 26.6.2013 was attended by Shri S.S. Gupta, Chartered Accountant on behalf of the applicants who reiterated the grounds of

revision application. Applicant has relied upon GOI Revision Order No. 81-104/12-Cx dated 03.03.2012 in their own case.

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

7. Government notes that original authority sanctioned the rebate claims as per impugned orders-in-original but restricted the sanction to the amount of duty paid on FOB value of exported goods shown in shipping bills accepting the said value as transaction value in terms of section 4 of CEA 1944. The applicants filed appeals before Commissioner (Appeals) who rejected the same. Now the applicants have filed these revision application on the grounds as stated in para 4 above.

8. Government observes that for proper understanding and consideration issue involved the relevant statutory provisions for determination of value of excisable goods are required to be perused and the same are extracted below:-

8.1 The relevant and applicable section 4(1) (a) of Central Excise Act, 1944 stipulates that where duty of excise is chargeable on any excisable goods with reference to their value, then on each removal of said goods such value shall,

(a) In a case where the goods are sold by the assessee, for delivery at time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value.

(b) In other case, including the cases where the goods are not sold be the value determined in such manner as may be prescribed.

8.2 word 'Sale' has been defined in Section 2(h) of the Central Excise Act, 1944, which reads as follows:

" 'Sale' and 'Purchase' with their grammatical variations and cognnate expression, mean any transfer of the possession of goods by one person on another in ordinary course of trade or business for cash or deferred payment or other valuable consideration."

8.3 Place of Removal has been defined under Section 4(3) ©(i),(ii), (iii) as:

(i) A factory or any other place or premises of production of manufacture of the excisable goods;

(ii) A warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty;

(iii) A Depot, Premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory.

8.4 The rule 5 of Central Excise Valuation (Determination of Price of Excisable Goods) rules, 2000 is also relevant which is reproduced below:-

"Rule 5. Where any excisable goods are sold in the circumstances specified in clause (a) of sub-section (1) of section 4 of the Act except the circumstances in which the excisable goods are sold for delivery at a place other than the place of removal, then the value of such excisable goods shall be deemed to be the transaction value, excluding the cost of transportation from the place of removal upto the place of delivery of such excisable goods.

Explanation 1. – "Cost of transportation" includes –

(i) The actual cost of transportation; and

(ii) In case where freight is averaged, the cost of transportation calculated in accordance with generally accepted principles of costing.

Explanation 2. - For removal of doubts, it is clarified that the cost of transportation from the factory to the place of removal, where the factory is not the place of removal, shall not be excluded for the purpose of determining the value of the excisable goods."

8.5 Government observes that from the perusal of above provisions it is clear that the place of removal may be factory / warehouse, a depot, premise of a consignment agent or any other place of removal from where the excisable goods are to be sold for delivery at place of removal. The meaning of word "any other place" read with definition of "Sale", cannot be construed to have meaning of any place outside geographical limits of India. The reason of such conclusion is that as per Section 1 of Central Excise Act, 1944, the Act is applicable within the territorial jurisdiction of whole of India and the said transaction value deals with value of excisable goods produced/manufactured within this country. Government observes that once the place of removal is decided within the geographical limit of the country, it cannot be beyond the port of loading of the export goods. Under such circumstances, the place of removal is the port of export where sale takes place.

8.6 Government observes that the respondent in their counter reply relied upon the CBEC circular 203/37/96-Cx dated 26.4.96 and circular No.510/06/2000-Cx dated 3.2.2000.In this regard, the Government observes that w.e.f. 1.7.2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act. Though the CBEC circular 203/37/96-Cx dated 26.4.96 was issued when transaction value concept was not introduced yet the said circular clearly states that AR4 value of excisable goods should be determined under section 4 of Central Excise Act, 1944 which is required to be mentioned on the Central Excise invoices. Even now the ARE-1 value is to be the value of excisable goods determined under section 4 of Central Excise

Act,1944 i.e. the transaction value as defined in section 4(3)(d) of Central Excise Act. CBEC has further reiterated in its subsequent circular No.510/06/2000-Cx dated 3.2.2000 that as clarified in circular dated 26.4.96 the AR4 value is to be determined under section 4 of Central Excise Act, 1944 and this value is relevant for the purpose of rule 12 and 13 of Central Excise Rules. The AR4 and rule 12/13 are now replaced by ARE-1 and rule 18/19 of Central Excise Rules, 2002. It has been stipulated in the notification No.19/04-CE(NT) dated 6.9.04 and the CBEC circular No.510/06/2000-Cx dated 3.2.2000 that rebate of whole of duty paid on all excisable goods will be granted. Here also the whole duty of excise would mean the duty payable under the provision of Central Excise Act.

8.7 Government observes that the CBEC Circular No.510/06/2000-Cx dated 3.2.2000 has also been relied upon by applicant. In this regard, the Government observes that w.e.f. 1.7.2000, the concept of transaction value was introduced for valuation of goods under Central Excise Act and therefore said Circular issued prior to introduction of transaction value concept, cannot be strictly applied after 1.07.2000. As per para 3(b)(ii) of Notification No. 19/04-CE(NT) dated 6.09.04, the rebate sanctioning authority has to satisfy himself that rebate claim is in order before sanctioning the same. If the claim is in order he shall sanction the rebate either in whole or in part.

8.7.1 The said para 3(b)(ii) is reproduced below :-

"3(b) Presentation of claim for rebate to Central Excise :-

(i) ....

(ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part."

The said provisions of this notification clearly stipulate that after examining the rebate claim, the rebate sanctioning authority will sanction the claim in whole or part as the case may be depending on facts of the case.

8.7.2 Government notes that said notification issued under Rule 18 of Central Excise Rules, 2002, prescribes the conditions, limitations and procedure to be following for claiming as well as sanctioning rebate claims of duty paid on exported goods. The satisfaction of rebate sanctioning authority requires that rebate claim as per the relevant statutory provisions is to be in order. He does not have the mandate to sanction claim of obviously excess paid duty and then initiate proceeding for recovery of the erroneously paid rebate claim. Therefore, the circular of 2000 as relied upon by applicant cannot supersede the provisions of Notification No. 19/04-CE(NT). Adjudicating authority has therefore rightly sanctioned the part rebate claim, and also rightly held that any amount paid in excess of duty liability on one's own volition cannot be treated as duty and it has to be treated a voluntary deposit with the Government which is required to be returned to the assesses / respondents in the manner in which it was paid as the said amount cannot be retained by Government without any authority of law. Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 11.9.2008 in CWP Nos.2235 & 3358 of 2007, in the case of M/s. Nahar Industrial Enterprises Ltd. Vs. UOI reported as 2009 (235) ELT-22 (P&H) has decided as under:-

"Rebate/Refund – Mode of payment – Petitioner paid lesser duty on domestic product and higher duty on export product which was not payable – Assessee not entitled to refund thereof in cash regardless of mode of payment of said higher excise duty – Petitioner is entitled to cash refund only of the portion deposited by it by actual credit and for remaining portion, refund by way of credit is appropriate."

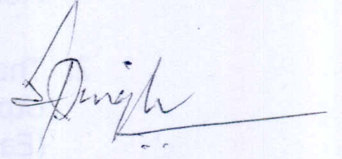
Hon'ble High Court of Punjab & Haryana has observed that refund in cash of higher duty paid on export product which was not payable, is not admissible and refund of said excess paid duty/amount in Cenvat Credit is appropriate. As such the excess paid amount/duty is required to be returned to the respondent in the manner in which it was paid by him initially.

9. In view of above discussion, Government holds that rebate claim sanctioned in the instant case is in order. However, the excess paid duty cannot be retained by Government and same has to be treated as voluntary deposit with Government. Therefore, Government directs that excess paid amount may be allowed to be re-

credited in the Cenvat Credit account from which duty was paid at the time of clearance of export goods. The impugned orders-in-appeal are modified to this extent.

10. All the Revision Applications stands disposed of in terms of above.

11. So, ordered.



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

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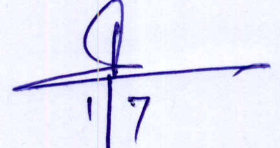
Attested



(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.576-598/13-Cx dated 27-06-2013

Copy to:

1. Commissioner of Central Excise, Customs & Service Tax, Raigad Commissinerate, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai – 410206.

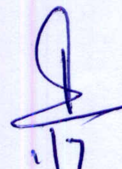
2. The Commissioner of Central Excise (Appeals-II), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.

3. The Assistant Commissioner of Central Excise (Rebate), Raigad Commissinerate, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai – 410206.

4. PS to JS(RA)

5. Guard File.

6. Spare Copy



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