

**REGISTERED  
SPEED POST**



**F.No. 195/761/11-RA**  
**GOVERNMENT OF INDIA**  
**MINISTRY OF FINANCE**  
**(DEPARTMENT OF REVENUE)**

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

Date of Issue... 25/01/13

ORDER NO. 66/13-Cx DATED 23-01-2013 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,  
1944 AGAINST THE ORDER-IN-APPEAL No.  
IND/CEX/000/APP/237/2011 dated 22.06.2011  
passed by Commissioner of Central Excise,  
(Appeals), Indore.

**APPLICANT** : M/s. Khandwa Oil (Unit-II), Khandwa.

**RESPONDENT** : Commissioner of Central Excise,  
Indore.

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**ORDER**

This revision application is filed by the M/s. Khandwa Oil (Unit-II), Khandwa against the Order-in-Appeal No. IND/CEX/000/APP/237/2011 dated 22.06.2011, passed by the Commissioner of Central Excise (Appeals), Indore with respect to Order-in Original passed by the Assistant Commissioner of Central Excise, Division-Indore.

2. Brief facts of the case are that the applicant is engaged in the manufacture of Soya oil and products thereof. Applicant had filed a rebate claim in respect of duty paid w.r.t inputs used in the export of the De-Oiled-Cake. The adjudicating authority vide impugned Order-in-Original rejected the rebate claims of applicant in respect of the duty paid on inputs used in the manufacture of goods exported on the ground of non observance of conditions produce of the Notification No. 21/2004 – CE (NT) dt. 06-09-2004 i.e. condition regarding filing of declaration and conditions regarding verification of input-output norms and also on the ground that the applicant failed to adduce any documents showing that the inputs used in the manufacture of final export product were duty paid.
3. Being aggrieved by the impugned Order-in-Original, the applicant filed appeal before Commissioner(Appeals), who rejected the same.
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 Claim of the applicant has been rejected only due to reason that there is no separate approval for input output ratio for its IInd Unit. Mere non-approval of Input-output ratio for its IInd unit could not be taken to be made fatal for the claimant for denying them the benefit of the export goods, especially when there was no material on the record to suggest that there was no export of the goods was actually made by them. Applicant was already having input-output ratio approval at

4.71 of its first unit. Looking to the same product produced in IInd unit, applicant was under bonafide belief that there is no need to take separate approval for its IInd unit when it is already there for 1<sup>st</sup> Unit.

4.2 It is submitted that there are two practices followed in Indore Commissionerate. If the claimant has got its input output ratio approved from competent authority than refund is granted accordingly otherwise the norms fixed under SION is followed. As per SION norms ratio of input output ratio is 6.90 which is much higher than the ratio (4.71) claimed by the applicant. It is therefore submitted that even as per 'SION' norms applicant is eligible for claiming refund without obtaining any approval for Input/Output ratio.

4.3 It is submitted that conditions of approval of Input-output ratio specified under Notification No. 21/2004-CE cannot restrict the main provision of granting refund of duty suffered on inputs and paid for during the course of export of goods because then it will amount to taking away benefit with one hand what has been granted by the other. The policy of the Government of India is to promote exports by giving maximum possible benefits to the exporters and encourage earning foreign exchange for the country. Therefore disallowing the refund through impugned order is against the Export Policy of our Government and also against the interest of the Manufacturer-Exporter community which may not be appreciated by anybody. The applicant has relied upon same case laws in favour of their contention.

4.4 Applicant has complied with all conditions as laid down in the notification No. 02/2004-CE(NT) except the separate approval of input-output ratio for its IInd Unit. This was also because of approval was already there in hand for its 1<sup>st</sup> unit and accordingly applicant was under bonafide belief that there is no need of taking separate approval. When it came to their knowledge, they immediately rectified the same by applying for the same on 30.04.2009. Finally approval was granted at the same level as approved for its 1<sup>st</sup> unit. Approval was granted by the same authority who has adjudicated the case and that was also approved before adjudication of case.

5. Personal hearing scheduled in this case on 07-12-2012 was attended by Shri Krishan Garg, Chartered Accountant on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended hearing on behalf of respondent department. The applicant during the course of hearing also submitted documents showing that duty has been paid by then in this impugned claims.
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 exported the goods and filed rebate claim of duty paid in respect of input used in manufacture of final export product. Original authority rejected the rebate claim, on the ground that the applicant failed to follow conditions of filing of declaration and verification of input-output ratio in terms of Notification No. 21/2004-CE (NT) dated 06-09-2004 and also that applicant failed to adduce documentary evidences showing duty paid nature of inputs. Commissioner (Appeals) decided the case in favour of department. Now, applicant has filed this revision application on grounds mentioned in para (4) above.
8. Government observes that as per the Notification No. 21/2004-CE (NT) read with Chapter 8 of CBEC's Excise manual of supplementary instructions, a manufacturer intending to claim input rebate should file a declaration with the jurisdictional Deputy/ Assistant Commissioner of Central Excise for verification and approval of input-output ratio prior to export of the goods and obtain the permission of the Deputy /Assistant Commissioner of Central Excise for manufacture or processing and export of finished goods. Government notes that applicant did not file input output declaration prior to export. Applicant stated that they got approval of identical input-output ratio for their other unit and also that they got approval of input-output norms after export of goods on 30.04.2009 i.e. before issue of impugned Order-in-Original. The adjudicating authority has not discussed anything about the approval claimed to be given on 30.04.2009 of said declarations in terms of Notification No. 21/04-CE(NT) dated 06-09-2004. There is no dispute that any other condition of the said Notification was also not complied with. Government also

observe that the substantial benefit cannot be denied for such minor procedural infractions. Further, it has been laid down in the CBEC Central Excise Manual, chapter 8, part V para 3.2 that for the sake of transparency and convenience input output norms notified under the Export Import Policy may be accepted by the department unless there are specific reasons for variation. The applicant also contended that this ratio of input-output (4.71) less than input-output ratio of SION which is 6.90. Hence, even if the applicant failed to file any such declaration, the benefit of rebate can be extended provided all other conditions of notification are complied with.

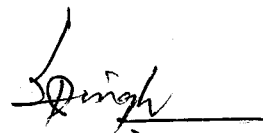
9. Government observes that the lower authorities have observed that the applicant failed to adduce any documentary evidence to prove duty paid nature of inputs. Government notes that the applicant during the course of Personal Hearing before Commissioner (Appeals) has stated that they have submitted documents showing payment of duty before the adjudicating authority as well as with the Appeal memo. There is no findings of lower authorities on such documents showing payment of duty by the applicant. The applicant has submitted copies of some duty paying documents. On perusal of sample documents, submitted by the applicant, Government finds that duty payments have been shown in copies of relevant AREs-1 and Excise Invoices. There is mention of entry in RG-23 register also with their respective Serial numbers. As such, aspect of duty paid nature of inputs is required to be verified by the original authority with original documents and if, the duty paid nature of inputs is established as shown in documents discussed above w.r.t. original documents, the rebate claims may be sanctioned, if all other condition of Notification No. 21/2004 -CE (NT) dated 06.09.2004 are complied with.

10. In view of above circumstances, Government sets aside the impugned orders and remand the case back to original authority for denovo consideration in the light of above observations. A reasonable opportunity of hearing will be given to the applicants. The applicant is directed to produce all the relevant duty paying documents before the adjudicating authority within one month of the receipt of this order.

11. The revision applicant is disposed off in above terms.

12. So, Ordered.

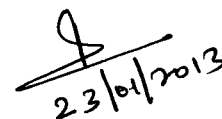
M/s. Khandwa Oils (Units 2)  
(A Unit of Itarsi Oils & Flours Ltd.),  
Siltia Pnadhana,  
Distt- Khandwa (MP)



(D.P. Singh)

Joint Secretary to the Govt. of India

ATTESTED



सहायक उप-निदेशक (आय) / Assistant Controller (Revenue)  
CH/EC-002 (कान्हावा) / Khandwa  
वित्त विभाग, (आय) (MP)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

Order No. 66 /13-Cx dated 23-01-2013

Copy to:

1. The Commissioner of Customs and Central Excise, P.B. No. 10, Manikbagh Palace, Indore (MP).
2. The Commissioner (Appeals)-1, Customs & Central Excise, 4, Indralok Colony, Keshar Bagh Road, Indore 452009.
3. The Asstt. Commissioner of Central Excise & Customs, C.G.O. Complex, Division- Indore (MP)
4. Shri Krishan Garg & Co., Chartered Accounts, 409-411, Chetak Centre, Near Hotel Shreemaya, 12/2, R.N.T. Marg, Indore (MP).
- ✓ 5. PS to JS (RA)
6. Guard File.
7. Spare Copy

  
23/1/2013  
(BHAGWAT P. SHARMA)  
OSD (REVISION APPLICATION)

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