

REGISTERED  
SPEED POST



**F.No.195/775/2012-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue...30/5/16.....

**ORDER NO. 68/2016-CX DATED 23.05.2016** 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 application filed under Section 35 EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/355/RGD/2012 dated 25.05.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.
- Applicant : M/s KBC Steel Pvt, Ltd. Mumbai-II
- Respondent : Commissioner, Central Excise, Raigad, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410-206.

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## ORDER

This revision application is filed by M/s KBC Steel Pvt. Ltd., Mumbai, against the Orders-in-Appeal No.US/355/RGD/2012 dated 25.05.2012 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to Orders-in-Original passed by the Commissioner of Central Excise, (Rebate) Raigad.

2. Brief facts of the case are that the applicant filed a rebate claim of Rs. 1,39,537/- it has been observed that the applicant had altered the particulars of ARE-1 No.54/27.5.2011 in para-1 i.e. address of the Assistant/Deputy Commissioner of Central Excise/Maritime Commissioner of Central Excise as well as Column 10 by using white ink to camouflage clearance of goods without payment of duty under Letter of Undertaking. The claim was sent to Superintendent in-charge of the applicant's unit who informed that the clearance of the goods for export under the above said ARE-1 was not on payment of duty but under Bond. The remark "Central Excise duty paid vide RG23 Entry No. 3 page No.1 dated 29.04.2011" was added/inserted in Column No. 12 of the ARE-1 with a deliberate intention to defraud the Department by lodging a false claim so as to take ineligible benefit under Rule 18 and contravening the provisions of Central Excise Rules, 2002. Accordingly, the rebate claim amounting to Rs. 1,39,537/- was held inadmissible and penalty of equal amount was imposed under Rule 26(2) (ii) of Central Excise Rules 2002.
3. Being aggrieved by the said Order-in-Original, the applicant filed appeals before Commissioner (Appeals) who rejected the same.
4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision applications under Section 35EE of the Central Excise Act, 1944 before Government on following grounds:
  - 4.1 The applicant submits that they are new in the field of export business. They were not aware of the export procedure and the formalities to be complied with. Therefore they engaged one customs consultant to do this work. The consultants committed the mistake in filing rebate claim though the export was under bond. Why the consultants used the whitener to erase the original entries on ARE-1 and how he obtained payment particulars we were completely in dark. Whatever documents he presented for signature were signed by us believing in him. Blind belief on him turned out to be wrong we do admit. It was not at all our intention to defraud the Government. When the mistake was pointed by our manufacturing unit at Navasari (Gujarat) the claim was immediately withdrawn vide our letter dated 08.12.2011.
  - 4.2 When the claim was withdrawn it is really surprising how the Deputy Commissioner, Central Excise, Rebate, Raigad proceeded to decide the rebate claim which was withdrawn and as such was defunct or dead that to after 25 days of the withdrawal of the claim.



- 4.3 The Deputy Commissioner issued the show cause notice on 03.01.2012 that is after 25 days of the withdrawal of the claim which was totally illegal and not sustainable in law. The Order-in-Original passed by him is thus totally illegal and not sustainable in law. There was no point in rejecting the claim which was already withdrawn and to impose Penalty of equal amount.
- 4.4 The applicant further submit that in appeal to the commissioner (Appeals) it was pleaded before him that the action of the Deputy Commissioner (Appeals) in adjudicating the defunct claim was totally illegal and that Rule 26(2) (ii) cannot be invoked for imposition of penalty in absence of any provision there in to impose penalty under circumstances of this nature. However the Commissioner (Appeals) has not given any findings on these two points in impugned order.
- 4.5 The applicant submit that under Rule-26(2) (ii) where any person issues invoice or any other document or abates in making such document, on the basis of which the user of the said invoice or documents is likely to take or taken any ineligible benefits under the Act of the rules made thereunder like claiming Cenvat credit under the Cenvat Credits Rules, 2004 or refund, shall be liable to a penalty not exceeding the amount of such benefit or five thousand rupees whichever is greater.
- 4.6 The applicant submit that they have not issued any invoice or document on the basis of which the other party has claimed any benefits as contemplated in rule 26(2) (ii) of Central Excise Rules, 2002. The rebate is not at all covered by the provisions of the said rule. Invoking Rule 26(2) (ii) for imposition of penalty is also totally illegal.
5. Personal hearing scheduled in this case on 16.12.2015, 04.01.2016 and 20.01.2016. Nobody attended the hearing. Hence, government proceeds to decide the case on merit on the basis of available records.
6. Government has carefully gone through the relevant case record available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.
7. Government observes that the applicant affected the export without payment of duty under Bond under Rule 19 of the Central Excise Rules, 2002. Subsequently they claimed rebate under Rule 18 of said Rule I bid. However, they withdrew their claim for rebate subsequently. Original authority held that since, the applicant altered certain documentary entries by addition and deletion, apart from rejection of rebate claim, which is otherwise also not admissible to them, rendered themselves liable for penal action under the provisions of Rule 26(2)(ii) of the Central excise Rules, 2002. Commissioner (Appeals) upheld the impugned Order-in Original. Now the applicant has filed this Revision Application on ground maintained in para (4) above.
8. Government observes that the applicant themselves admitted that they are not entitled for rebate claim as their exported the goods under Bond and they wrongly



filed rebate claim. Since, this position is admitted by the applicants, Government finds no reason to discuss inadmissibility of rebate claim.

9. Now main issue to be decided is the correctness of imposition of penalty amounting to Rs. 1,39,537/- on applicant under provision of Rule 26 (2) (ii) of Central Excise Rule 2002.

9.1 Government notes that the original authority in "FINDING" portion of impugned Order-in Original observed as under with regard to alterations in excise documents:

*"The undisputed facts are that*

*.The goods under the ARE-1 No. 54 dated 27.05.2011 were cleared without payment of duty under Letter of undertaking (Form UT-1).*

*.The remark I Column 10 of ARE-1 That "Goods cleared under UT-1 "was removed by using white ink.*

*. The remark "Central Excise duty paid vide R423 entry No. 3 page No. 1 dated 29.04.2011" was added/inserted in column No. 12 of the ARE-1.*

*.Particulars in para 1 of ARE-1 i.e. address of the Assistant/Deputy Commissioner of Central Excise/Maritime Commissioner of Central Excise was altered by using white ink. "*

10. From the above, it is clear that the nature of alteration is substantial in nature and cannot be called unintentional. The applicant claim that this alteration was done by their Custom consultant and such the alterations were signed by them under blind faith on said customs Consultant is as a very generic and casual explanation. It under no circumstances can absolve the applicant from their role and responsibility in making such serious alterations in statutory excise documents with an intention to avail benefit of rebate without payment of any duty. As such, Government finds that the applicants was rightly subjected to penal action under provision of Rule 26(2)(ii) of Central Excise Rule, 2002.

11. Further, Government finds no merit in the contention of the applicant that the Rule 26(2)(ii) is not applicable to the present case. It is an admitted fact that the applicant has indulged in altering of ARE-1, based on which he had intended to avail rebate under Rule 18 and is thus liable for imposition of penalty under Rule 26. The applicant further contended that as they had withdrawn their rebate claim, question of any penalty does not arise. However, it is due to false rebate claim filed by the applicant that the act of tampering with the statutory documents and entering false details subsequently came to light. Evidences fully implicate applicant on count of fraud and restricts the scope to get relief from the penalty. In this regard, Government also places reliance on the decision of the Hon'ble Supreme Court in the case of the Commissioner of Customs vs Candid Enterprises 2001(130) ELT 404(SC) wherein it has held that "fraud nullifies everything".



12. In view of above, Government finds no infirmity in order of Commissioner(Appeals) and hence, upholds the same.
13. Revision application is thus rejected being devoid of merits.
14. So, ordered.

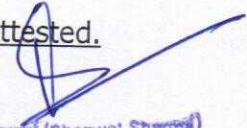


**( RIMJHIM PRASAD )**

Joint Secretary to the Government of India

M/s KBC Steel Pvt. Ltd.  
302, 3<sup>rd</sup> floor, Simran Plaza  
3<sup>rd</sup> & 4<sup>th</sup> Cross Road next to Hotel  
Regal Enclave, Khar (W),  
Mumbai-400 052.

Attested.

  
(Shegvat Sharma)  
असिस्टन्ट आडयुजर/Assistant Commissioner  
C.B.E.C.-O.S.D. (Revision Application)  
वित्त मंत्रालय (असिस्टन्ट आडयुजर)  
Ministry of Finance (Dept. of Rev.)  
भारत सरकार/Gov. of India  
नई दिल्ली / New Delhi

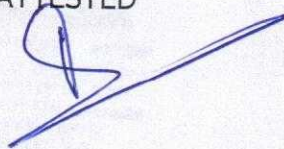


**ORDER NO. 68/2016-CX DATED 23.05.2016**

Copy to:

1. Commissioner of Central Excise Customs Raigad Commissionerate, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410-206.
2. Commissioner (Appeals-II), Central Excise 3<sup>rd</sup> floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra, Mumbai-400-051.
3. Deputy Commissioner, Central Excise Rebate, Raigad Office of the Maritime Commissioner of Central Excise, ground floor, Plot No. 1, Sector-17, Khandeshwar, New Mumbai-440-206.
4. PA to JS(RA)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED



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