

F NO. 195/732/13-RA .

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**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India**
8th Floor, World Trade Centre, Cuff Parade,
Mumbai- 400 005

F NO. 195/732/13-RA / 1330

Date of Issue: 24.02.2021

ORDER NO. 76 /2021-CX (SZ) /ASRA/MUMBAI DATED 16.02.2021
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s Para Enterprises Pvt. Ltd.

Respondent : Commissioner of Central Excise, Tirunelveli.

Subject : Revision Application filed, under section 35EE of the Central
Excise Act, 1944 against the Order-in-Appeal No. 49/2012 dated
28.09.2012 passed by the Commissioner of Central Excise
(Appeals), Tirunelveli.



ORDER

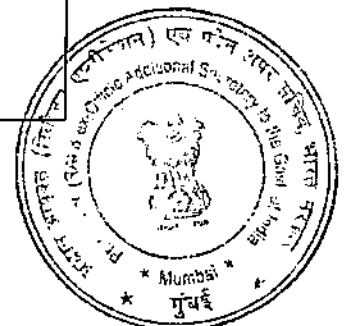
This Revision Application is filed by M/s Para Enterprises Pvt. Ltd., No 421, Thattumettu Street, Sattur Road, Sivakasi – 626 123 (herein after as 'the Applicant') against the Order-in-Appeal No. 49/2012 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Tirunelveli.

2. In brief, the Applicant manufacturer of match skillets and were exporting the same. They had filed a rebate claim of Rs. 4,41,851/- for rebate of duty paid on duplex board used in the manufacture and export of such skillets in terms of Rule 18(2) of Central Excise Rules, 2002 read with Notification No. 21/2004-CE(NT) dated 06.09.2004. On scrutiny of the claim, the Applicant was issued a Show Cause Notice dated 23.03.2011 on the following grounds:

- (a) No declaration as regards the input output ration had been filed;
- (b) The supplier of the duplex board was no a registered dealer and hence, the duty paid nature of the inputs was not established;
- (c) Short shipment in the export quantity;
- (d) Paper Cess paid on Input was not a duty defined under Notification No. 21/2004-CE(NT) dated 06.09.2004 as amended.

3. The Assistant Commissioner of Central Excise, Sivakasi Division vide Order-in-Original No. 53/2011 (Rebate) dated 25.05.2011 sanctioned an amount of Rs. 2,70,841/- and rejected the balance amount of Rs. 1,71,133/- on the following grounds:

Sl.No.	Grounds of reject of rebate claim	Rebate amount involved (Rs.)
1	Ineligible rebate claimed towards paper cess after excluding paper cess of Rs. 496/- involved in ARE-2 No.29 dated 15.7.2010 withdrawn from the claim (Rs.12,980/- minus Rs. 496/-)	12,484



2	Ineligible rebate claimed towards duty paid (BED + Ed.Cess) on paper board used for the goods exported under ARE-2 No. 29 dated 15.7.2010 withdrawn from the claim (Sl.Nos. 36 to 39 of the list)	16,386
3	Ineligible rebate (BED + Ed.Cess) claimed on the quantity of paper board purchased from M/s Srinivasa Boards and M/s Krishna Inc (Unregistered dealers) and consumed in exports boards at Sl.No. 25 to 35 of the list).	1,41,328
4	Ineligible rebate claimed towards duty (BED + Ed.Cess) paid on inputs contained in 75 cartons of short shipment.	935
Total rebate amount rejected		1,71,133

Aggrieved, with that part of the Order-in-Original where the rebate claim to the tune of Rs. 1,71,133/- was rejected, the Applicant filed appeal with the Commissioner of Central Excise (Appeals), Tirunelveli who vide Order-in-Appeal No. 49/2012 dated 28.09.2012 rejected their appeal and upheld the Order-in-Original dated 25.05.2011

4. Aggrieved with that part of the Order-in-Appeal where the rebate claim to the tune of Rs. 141,328/- was rejected, the Applicant filed the current Revision Application on the following grounds:

- (i) The Applicant had not contested the rejection of rebate of Rs.964/- involved in short shipment; Cess amount of Rs.12,980/- since the same is not defined in the aforesaid notification; and the rebate claim pertaining to ARE-2 No.29 dated 15.7.2010 involving duty amount of Rs.16,884/- before the lower appellate authority. They had challenged the impugned Order-in-Original only in rejecting the rebate claim of



Rs.1,41,328/ on the ground that the duplex board has been purchased from an unregistered dealer is not at all sustainable.

- (ii) They had placed order for purchase of duplex board with the unregistered dealers namely M/s Krishna Inc / M/s Srinivasa Boards who in turn had purchased the said duplex board from the registered manufacturer namely M/s. Sripathi Paper & Boards Ltd, Sivakasi on payment of excise duty under proper Central Excise Invoices. The Applicant had received the said duplex board within their unit from the above manufacturer directly under the cover of above Central Excise Invoices, wherein the goods have been billed to the un-registered dealer but consigned to the Applicant. In other words, the name of the Applicant had been clearly endorsed as consignee in those Central Excise Invoices issued by the above manufacturer. The applicant had wrongly mentioned the names of supplier as M/s Krishna Inc / M/s Srinivasa Boards in the ARE-2 forms covering the exports instead of the name of manufacturer M/s. Sripathi Paper & Boards Ltd, who had supplied the goods directly to the Applicant. This fact was not in dispute and the impugned notice itself takes cognizance of it. As such, the duplex board used by the Applicant in the manufacture of export goods was clearly duty paid.
- (iii) When the dealer had purchased the goods from the manufacturer M/s. Sripathi Paper & Boards Ltd. which was evident from the excise invoice issued by the said manufacturer wherein the name of the dealer is mentioned as the buyer and the name of the Applicant was mentioned as the consignee, and which was also not in dispute at all, it was not known as to how the lower authority could conclude that the duplex board in question had been purchased from open market without payment of duty and the said decision was not at all sustainable.



- (iv) In terms of condition 3 of the Notification No. 21/2004-CE(NT) which deals with procurement of materials, the manufacturer shall obtain the materials directly from the registered factory. The said condition only stipulates that the materials should be received from a central excise registered factory or dealer and it does not specify that the goods should have been purchased by the Applicant from a central excise registered unit or dealer. In the case of Cenvat Credit Rules also, the manufacturer is entitled to take credit of duty paid goods received within the factory under the cover of excise invoice issued by a manufacturer or a registered dealer irrespective of the fact whether the goods have been purchased/sold or otherwise.
- (v) It was already on record that the materials had infact been supplied from a registered manufacturer directly from their factory to the Applicant though the Sale/purchase of such goods have been routed through a unregistered dealer, there was no requirement of any condonation as there is no violation of the condition specified in the Notification 21/2004-CE(NT), hence the reliance placed on the judgment of the Hon'ble Supreme Court in the case of M/s. Eagle Flask Industries Ltd. and M/s. Indian Aluminum Company Ltd was misplaced and the ratio of the said judgments are not applicable to the facts and circumstances of the current case.
- (vi) It is settled in law that the consignee of the goods covered in a Central Excise invoice is entitled to avail Cenvat credit of duty paid on goods received even though the goods have been sold to a different buyer other than the consignee. Similarly, when the consignee is entitled to avail Cenvat credit, the consignee is also entitled to claim rebate of such duty paid on inputs under the Notification No. 21/2004-CE(NT) and there is no bar in this regard.



- (vii) The Commissioner(Appeals) in his impugned order had placed reliance on the judgment of the Hon'ble Supreme Court in the case of M/s. Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437], while rejecting the contention put forth by the applicant. In this regard, the Commissioner(Appeals) had observed that it is held in the above judgment that distinction has to be made between procedural condition of technical nature and a substantive condition and non observation of the former is condonable while that of the latter not condonable as likely to facilitate commission of fraud and introduce administrative inconvenience. The Applicant submitted that since the duplex board in question has been directly received by them from the factory of the manufacturer under the cover of duty paid central excise invoice wherein the applicant name has been clearly mentioned as Consignee, the substantive condition of the Notification No. 21/2004-CE(NT) stands complied with and the fact the intermediary dealer is not registered and the dealers invoice does not indicate the duty payment details separately is only a procedural requirement of technical nature, which is very much condonable. They placed reliance on the Judgment of the Hon'ble High Court of Bombay in the case of Madhav Steel [2010 TIOL 575 HC MUM CX].
- (viii) The Applicant prayed that the impugned order to the extent so far as it relates to rejection of rebate claim be set aside with consequential relief.

5. The Applicant delayed filing the Revision Application, details of which is given below:

Sl. No.	Revision Application	OIA dt	Date OIA recd	Date RA/COD filed	No. of days delay
1	195/732/13-RA	28.09.2012	16.10.2012	22.01.2013	90+8



Appellant filed the Revision Application along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

6. Personal hearing in this case was fixed on 08.01.2021 and Shri Ganesh K.B. Iyer, Advocate appeared on behalf of the Applicant. He requested for condonation of delay of few days. He submitted that rebate has been denied merely because goods were purchased through three traders even though goods were procured from manufacturer showing them as consignee. He requested to consider his request for sanction of rebate

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions/counter objections and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government first proceeds to discuss the issue of delay in filing this revision application. The Applicant submitted that the delay was only due to the fact that the authorized signatory was not available in station on account of intervening Pongal festival holidays from 12th to 16th Janaury, 2013 and requested to condone the delay. The revision application is filed with a delay of 8 days and Government, in exercise of power under Section 35EE of Central Excise Act, 1944 condones the said delay and takes up revision application for decision on merit.

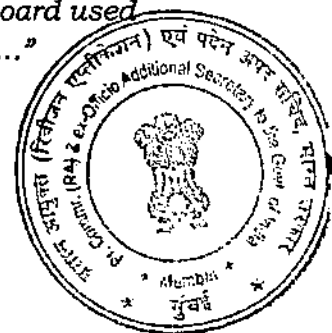
9. On perusal of the records, Government observes that the Applicant has filed the current revision application against the part of the Order-in-Appeal dated 28.09.2012 wherein the rebate claim to the tune of Rs. 1,41,328/- was rejected. The details as shown in Statement-A of the Order-in-Original are as given below:



SR.No.	ARE2/Are-1 No & date	Shripati Paper & Boards Pvt Ltd invoice	Krishna Inc. Bill & date	Srinvas Boards Bill & date	Qty recd (Kgs)	Actual quantity consumed (Kgs)	Rebate claimed on amount paid on actual quantity consumed (Rs.)		
							Basic 4%	Ed. & SHE Cess	Total
25	32 dt 21.7.10	1221 dt 22.6.10	-	463 dt 22.6.10	15642.0	15642.0	18476	572	19048
26	32 dt 21.7.10	1261 dt 23.6.10	-	472 dt 23.6.10	19979.100	19979.100	23599	730	24329
27	33 dt 26.7.10	1281 dt 25.6.10	-	484 dt 23.6.10	2227.800	2227.800	2639	79	2718
28	33 dt 26.7.10	1423 dt 1.7.10	-	540 dt 1.7.10	2346.300	2346.300	2771	86	2857
29	49 dt 9.9.10	1463 dt 3.7.10	-	553 dt 3.7.10	13959.300	13959.300	16488	510	16998
30	49 dt 9.9.10	1472 dt 3.7.10	-	558 dt 3.7.10	19813.200	19813.200	23403	724	24127
31	34 dt 28.7.10	14992 dt 6.7.10	-	576 dt 6.7.10	4834.800	4834.800	5711	177	5888
32	34 dt 28.7.10	1575 dt 12.7.10	555 dt 12.7.10	-	22064.700	22064.700	26062	807	26869
33	45 dt 3.9.10	1596 dt 13.7.10	562 dt 13.7.10	-	15597.600	3801.900	4491	135	4626
34	24 dt 1.7.10	1275 dt 24.6.10	-	478 dt 26.6.10	3752.300	3752.300	4283	129	4412
35	24 dt 1.7.10	1281 dt 25.6.10	-	484 dt 25.6.10	7881.400	7881.400	9190	276	9466
							137113	4215	141328

The Applicant was issued Show Cause Notice dated 23.03.2011 on the ground that the supplier of the duplex board was no a registered dealer and hence, the duty paid nature of the inputs was not established. The Applicant in their revision application submitted

"7.1that they had placed order for purchase of duplex board with the unregistered dealers namely M/s Krishna Inc / M/s Srinivasa Boards who in turn had purchased the said duplex board from the registered manufacturer namely M/s. Sripathi Paper & Boards Ltd, Sivakasi on payment of excise duty under proper Central Excise Invoices. The applicant has received the said duplex board within their unit from the above manufacturer directly under the cover of above Central Excise Invoices, wherein the goods have been billed to the unregistered dealer but consigned to the applicant. In other words, the name of the applicant had been clearly endorsed as consignee in those central excise invoices issued by the above manufacturer. The applicant had wrongly mentioned the names of supplier as M/s Krishna Inc / M/s Srinivasa Boards in the ARE-2 forms covering the exports instead of the name of manufacturer M/s. Sripathi Paper & Boards Ltd, who had supplied the goods directly to the applicant on payment of excise duty under proper Central Excise Invoices. As such, the duplex board used by the applicant in the manufacture of export goods is clearly duty paid..."



10. Notification No. 21/2004-CE(NT) dated 06.09.2004 reads as under:

"..... the Central Government hereby, directs that rebate of whole of the duty paid on excisable goods (hereinafter referred to as 'materials') used in the manufacture or processing of export goods shall, on their exportation out of India, to any country except Nepal and Bhutan, be paid subject to the conditions and the procedure specified hereinafter: -

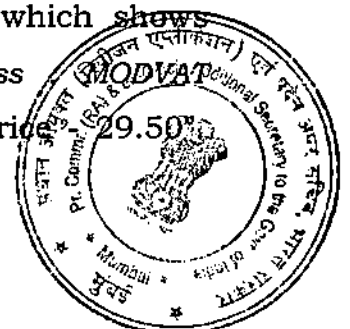
(1) Filing of declaration. - *The manufacturer or processor shall file a declaration with the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture describing the finished goods proposed to be manufactured or processed along with their rate of duty leviable and manufacturing/processing formula with particular reference to quantity or proportion in which the materials are actually used as well as the quality. The declaration shall also contain the tariff classification, rate of duty paid or payable on the materials so used, both in words and figures, in relation to the finished goods to be exported.*

(2) Verification of Input-output ratio. - *The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall verify the correctness of the ratio of input and output mentioned in the declaration filed before commencement of export of such goods, if necessary, by calling for samples of finished goods or by inspecting such goods in the factory of manufacture or process. If, after such verification, the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise is also satisfied that there is no likelihood of evasion of duty, he may grant permission to the applicant for manufacture or processing and export of finished goods.*

(3) Procurement of material. - *The manufacturer or processor shall obtain the materials to be utilised in the manufacture of the finished goods intended for export directly from the registered factory in which such goods are produced, accompanied by an invoice under rule 11 of the Central Excise Rules, 2002:*

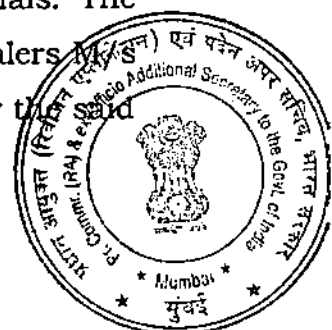
Provided that the manufacturer or processor may procure materials from dealers registered for the purposes of the CENVAT Credit Rules, 2002 under invoices issued by such dealers....."

11. Government observes that this is a case of rebate of duty at the input stage under Notification No. 21/2004-CE(NT) dated 06.09.2004. M/s. Sripathi Paper & Boards Ltd, Sivakasi had raised the Central Excise Invoice which shows "Invoice No: SPB-UII-SINV-1596", "Invoice Date : 13-7-2010" which shows "Customer Name : Krishna Inc.....Sivakasi" and "Delivery Address CONSIGNEE, PARAENTERPRISES (P) LTD UNIT-1.....SIVAKASI" and "Price



The dealer M/s Krishna Inc., Sivakasi Invoice shows "PARA ENTERPRISES (P) LTD, UNIT-1...SIVAKASI", "VAT SALES" , " Invoice No. KI 00562 Dt 13/7/2010" , "Transport : DIRECT" and "Rate per Kg- 30.79". Government observes that the M/s Krishna Inc., Sivakasi is not a registered dealer and the goods were transported directly to the Applicant. However, in the Vat Sales Invoice No. KI 00562 Dt 13/7/2010 of M/s Krishna Inc., Sivakasi, there is no details of M/s Sripathi Paper & Boards Ltd, Sivakasi in it. Further in the corresponding ARE-2 No. 45 dated 03.08.2010, the assessable value is shown as Rs. 30.79, whereas M/s Sripathi Paper & Boards Ltd.'s Central Excise Invoice No: SPB-UII-SINV-1596 dated 13-7-2010 shows the price as Rs. 29.50/- and M/s Krishna Inc., Invoice No. KI 00562 dated 13.07.2010 shows the rate per kg Rs. 30.79/-. The same is the case in respect of unregistered dealer M/s Srinivas Boards, Sivakasi wherein Vat Sales Invoice was raised in the name of the Applicant, goods were transported directly to the Applicant and M/s Sripathi Paper & Boards Ltd, Sivakasi Central Excise Invoice shows the delivery address as that of the Applicant and Customer Name was M/s Srinivas Boards, Sivakasi. Further in the corresponding ARE-2 No. 34 dated 28.07.2010, the assessable value is shown as Rs. 30.79, whereas M/s Sripathi Paper & Boards Ltd.'s Central Excise Invoice shows the price as Rs. 29.50/- and M/s Srinivas Boards invoice shows the rate per kg Rs. 30.79/-.

12. Government finds that the Condition No. 3 of Notification No. 21/2004-CE(NT) dated 06.09.2004, is mandatory in nature and not a procedural one. It does not leave any room for interpretation. The purpose of the condition is to ensure that the materials used in the manufacture of export goods are duty paid. The stipulation of obtaining materials from registered factory or registered dealer under the cover of invoice issued under Rule 11 of the Central Excise Rules, 2002 is intended to ensure duty paid status of raw materials. The Applicant had purchased the alleged inputs from the unregistered dealers M/s Krishna Inc. and M/s Srinivas Boards and the sales invoices raised by the said



unregistered dealers are being relied upon by the Applicant to claim duty paid nature of the inputs used in the manufacture of export goods. The invoices raised by M/s Krishna Inc. and M/s Srinivas Boards (which are given in Para 9 above) signify that the materials were purchased by the Applicant from the open market without payment of duty. The duty paid nature of the raw materials used in the manufacture of export goods cannot be established. Hence, the Applicant has not fulfilled the Condition No. 3 of Notification No. 21/2004-CE(NT) dated 06.09.2004. The Applicant is not eligible for rebate of Rs. 1,41,328/-.

13. In view of the above position, Government finds no infirmity in the Order-in-Appeal No. 49/2012 dated 28.09.2012 passed by the Commissioner of Central Excise (Appeals), Tirunelveli and, therefore, upholds the same and dismisses the Revision Applications filed by the Applicant being devoid of merits.

Shrawan
10/02/21
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 76/2021-CX (SZ) /ASRA/Mumbai Dated 10.02.2021

To,
M/s Para Enterprises Pvt. Ltd.,
No 421, Thattumettu Street,
Sattur Road,
Sivakasi - 626 123.

Copy to:

1. M/s Swamy Associates, #18, Rams Flats, Ashoka Avenue Directors Colony, Kodambakkam Chennai 600 024.
2. The Commissioner of CGST, Central Revenue Building, Bibikulam, Madurai - 625 002.
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.



ATTESTED

अधीक्षक
Superintendent
रिवीजन एप्लीकेशन
Revision Application
मुंबई इकाई, मुंबई
Mumbai Unit, Mumbai