

**REGISTERED
SPEED POST**



**F.No. 195/125/12-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..19-3-14

**ORDER NO. 83/14-Cx DATED 14.03.2014 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 applications filed under Section 35 EE of
the Central Excise Act, 1944 against the orders-in-
appeal No.BC/155/BEL/11 dated 28.11.11 passed
by the Commissioner of Central Excise (Appeals),
Mumbai-III.**

**Applicant : M/s Vijay Chemical Industries, Navi Mumbai,
Mumbai**

Respondent : Commissioner of Central Excise, Mumbai-II

ORDER

This revision application is filed by M/s Vijay Chemical Industries, Navi Mumbai, Mumbai against the order-in-appeal No.BC/155/BEL/11 dated 28.11.11 passed by the Commissioner of Central Excise (Appeals) Mumbai-III.

2. Applicant has stated as under:

2.1 The applicant is a partnership firm engaged in manufacture of various excisable goods falling under chapter 32 of the schedule to C. Excise Tariff Act, 1985. The applicant has been functioning as an EOU in terms of the Letter of Permission issued by Development Commissioner, SEEPZ, Mumbai. The applicant procures various materials without payment of duty against CT-3 certificates in terms of Notification No.22/2003-CE. However, certain materials are also procured on payment of duty. The applicant avails credit of the duty in terms of the provisions of Cenvat Credit Rules, 2004. In order to obtain refund of the above credit, the applicant has been exporting its goods on payment of duty and claiming rebate. The department has been consistently granting such rebates since the year 2007-08.

2.2 Twenty seven such claims are subject matter of this application. The Assistant Commissioner, Central Excise, Division - Belapur IV, sanctioned all the 27 claims for rebate of duty paid on exported final products amounting to Rs.51,36,061/-. The amount was paid to the applicant.

2.3 The Commissioner of Central Excise, Belapur, reviewed the orders and on his orders, the Assistant Commissioner, Central Excise, Belapur IV Division filed appeal against his 27 orders before this Hon'ble Commissioner (Appeals). The applicant filed cross objection. The appeals were decided vide Order-in-

Appeal No.PKS/103-129/BELI2010, dated 11.06.2010 passed by the Commissioner (Appeals) whereby the department's appeals were allowed. The applicant filed revision applications against the above order-in-appeal, under Sec 35EE. The same is pending before the C. Government as Revision Application No. 195/707-733/10-RA-Cx.

2.4 Two show cause notices were issued to the applicant asking them to show cause as to why the amounts of rebate sanctioned and refunded to them against the aforesaid 27 applications, should not be recovered with interest. The learned adjudicating authority did not agree to the contentions of the applicant and passed the impugned order confirming the demand and interest thereon.

3. Being aggrieved by the impugned order-in-appeal, the applicant has filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the various grounds; claims that they are eligible for rebate claim as duty paid goods were exported.

4. Applicant has not filed copy of order-in-appeal No. No.BC/155/BEL/11 dated 28.11.11 against which this revision application is filed. Party was asked vide this office letter dated 22.4.13 and 6.9.13 to supply the copy of said ORDER-IN-APPEAL. But they have failed to submit the same.

5. Personal hearing scheduled in this case on 26.9.13 & 12.3.14 was neither attended anybody on behalf of the applicant. However, applicant vide letter dated 26.9.13 has submitted as under:

5.1 It is submitted that the issue had arisen out of our claim for rebate of duty paid on the goods exported. Following two proceedings were simultaneously instituted in relation to the same rebate claims:

- (a) In twenty seven rebate claims allowed by the Assistant Commissioner, the department filed appeals seeking to set aside order of the Assistant Commissioner. The matter was finally decided by your honour vide Order No. 219-245/12-CX, dated 09/03/2012

holding that the rebate claims already sanctioned are liable to be recovered; and permitting the petitioner to take Cenvat Credit of the amount after paying it to the Central Excise department. The applicants have complied with this order of your honour and have not filed any petition before any court or authority for setting aside the same.

- (b) Simultaneously, the department issued two show cause notices under Section 11A demanding the amount involved in the above said 27 rebate claims.

These were adjudicated against the applicant, upheld by the Commissioner (Appeals) and are the subject matter of present revision application.

5.2 In as much as that the proceedings on rebate claims have already been decided against us, and we have already paid the amount in terms of the order dated 09/03/2012 of your kindself, the subsequent proceedings against the demand notice have become infructuous.

5.3 We therefore waive the personal hearing and request your kind self to dispose the application on the basis of material on record.

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

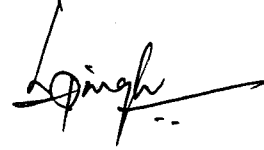
7. In this case, applicant has claimed that their earlier revision application No.195/707-733/10-RA-Cx was decided vide GOI Revision Order No.219-245/12-Cx dated 9.3.12, against them. In second round of proceeding initiated by issuing show cause notice for recovery of already sanctioned rebate claims, demand confirmed by original authority is upheld by Commissioner (Appeals). Applicant has stated that they have already paid the amount of confirmed demand to the department and these revision applications have become infructuous.

8. Government notes that applicant has failed to file copy of impugned order-in-appeal despite two reminders from this office. The facts of the case and decision of Commissioner (Appeals) cannot be known in the absence order-in-appeal. As such the said revision application is liable to be rejected on this ground alone. However, Government in earlier revision applications No.195-707-733/10, vide its GOI Revision Order No.219-245/12-Cx dated 9.3.12 had held as under:

"8.7 In view of above position, Government do not find any infirmity in the impugned Orders-in-Appeal on merit and holds that said rebate claims are rightly held inadmissible under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE/(NT) dated 06.09.2004. The rebate claims already sanctioned are liable to be recovered. The applicant has to repay the already sanctioned amount in Cash. After the recovery is affected, the applicant may be allowed to take recredit of said amount in the Cenvat Credit account from which it was initially paid. The impugned Order-in-Appeal is modified to this extent."

9. In view of above position, the instant revision application which is claimed by applicant himself as infructuous is dismissed.

10. So, ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

M/s Vijay Chemical Industries,
Plot No. R-422,
TTC Industrial Area,
M.I.D.C. Rabale,
Navi Mumbai – 400701

Adhesh

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/ New Delhi

Order No. 83/2014-Cx dated 14.03.2014

Copy to:

1. Commissioner of Central Excise, Mumbai-II, Piramal Chambers, 9th Floor, Jijibhoy Lane, Lalbaug, Parel, Mumbai-400012.
2. Commissioner of Central Excise (Appeals), Central Excise, Mumbai-III, 5th Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400614.
3. The Additional Commissioner of Central Excise, Belapur Commissionerate, 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400614.
- ✓ 4. PA to JS (RA)
5. Guard File
6. Spare copy

ATTESTED



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