REGISTERED
SPEED POST

F.NO. 195/511-517/11-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..29.01.13

ORDER NO. 83-89 /2013-CX DATED 29.1.2013 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 ACT, 1944 AGAINST THE ORDER-IN-APPEAL NO.108-114/2011 DATED 28.3.11 PASSED BY THE COMMISSIONER (APPEALS) CENTRAL EXCISE, CHENNAI.
APPLICANT	:	M/S REIL ELECTRICALS INDIA LTD, PUDUCHERRY
RESPONDENT	:	COMMISSIONER OF CENTRAL EXCISE, PUDUCHERRY

****

ORDER

These revision applications are filed by the applicants M/s REIL Electricals India Ltd, Puducherry against the order-in-appeal No.108-114/2011 dated 28.3.11 passed by the Commissioner (Appeals), Central Excise, Chennai with respect to order-in-original No.42-48/09 dated 31.8.2009 passed by Assistant Commissioner of Central Excise, Division-II, Puducherry.

2. Brief facts of the cases are that the applicants have cleared their products on payment of Central Excise duty for export following the procedure of self-sealing. They have filed rebate claims for the goods cleared for export during the period between July 2008 and January 2009 within the relevant date along with necessary documents like ARE1s, Shipping Bills, Bill of Lading, Excise Invoice, Export Invoice & Packing Lists, and the bank realization certificate. On verification of the refund claims the Range Officer have reported that the appellant do not have sufficient balance either in CENVAT Credit Account or in Personal Ledger Account to make payment of duty for the goods cleared for export during the said period. Sri C.Raghu, Manager Finance of the Company has also accepted this fact that there was no sufficient balance in their Personal Ledger Account/CENVAT Credit. However they have paid the duty involved on the goods exported on 4.2.2009 along with appropriate interest.

2.1 The Commissioner of Central Excise issued Show Cause Notice No.28/2009 dated 03.08.2009 proposing to demand Rs.86,75,640 towards excess credits taken and for Rs.12,07,057 towards credits taken without proper duty paying documents.

2.2 After the detection and voluntary payment of the amount with interest towards incorrect cenvat credit taken, the applicant filed 7 rebate Applications for the exports made on payment of duty. The following are the details of the 7 rebate claims:

Sl.No.	Date of filing the rebate claim	Amount of rebate claimed	Dates of Export
1	18.05.2009	23,84,364	33 ARE-I in July,08
2	25.05.2009	12,62,077	14 ARE-I in Aug,08
3	05.06.2009	21,39,026	24 ARE-I in Sep,08
4	16.06.2009	9,97,075	10 ARE-I in the month of Oct,08
5	07.07.2009	28,19,011	23 ARE-I in the month of Nov,08
6	10.07.2009	18,02,457	28 ARE-I in the month of Aug,08 & Dec, 08
7	20.07.2009	9,82,267	18 ARE-I in the month of Jan,09
		1,23,86,277	

2.3 As regards the rebate claims filed totaling to Rs.l,23,86,277/-, the Assistant Commissioner of Central Excise by his letter dated 17.08.2009 communicated that the applicant did not have credit balance either in Cenvat credit A/c or in PLA during the period from July 2008 to January 2009; that the Commissioner had also issued Show Cause Notice dated 03.08.2009 for the wrong availment of credit; that the applicant had cleared the goods without payment of duty under ARE-I for export and therefore the applicant was called upon to explain.

2.4 Seven Order in Originals, all dated 31.08.2009 were passed denying the rebate claims saying that the applicant did not discharge duty at the time of export or in the manner specified under Rule 8 of the Central Excise Rules on monthly basis; that the applicant however paid the duty at a later date on 4.2.2009; that the payment cannot be construed as payments for goods exported during July 2008 to September 2008; that the Show Cause Notice dated 03.08.2009 issued by the Commissioner was pending adjudication and so the rebates were rejected.

2.5 The applicant approached the Settlement Commission on 12.11.2009 who vide order dated 27.09.2010, settled the issue and accepted payment of Rs.86,75,640 towards demand of irregular credits taken with interest of Rs.3,18,191, accepted payment of Rs.94,239 towards another demand of irregular credits (against the demand

of Rs.12,07,057) with interest of Rs.33,899 and imposed penalty of Rs.10,000 on the applicant company.

3. Being aggrieved with the Orders-in-Original rejecting the rebate claims, applicant filed appeals before Commissioner (Appeals) who upheld the rejection of rebate claims saying-

i. Only on the strength of wrongly availed Cenvat credit, the applicant had made debit entries as if the goods were cleared on payment of duty.

ii. This is a case of clearance of goods fraudulently

iii. The Settlement does not provide right or privilege subsequently.

iv. The applicant must forego rebate because no duty was paid at the time of export.

v. Granting rebate would lead to condoning the non-payment of duty and would annul the exercise of settlement.

4. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

4.1 The order passed by the appellate authority is erroneous and illegal as the Ld. Commissioner (Appeals) failed to understand the true spirit of Rule 18 of the Central Excise Rules (hereinafter referred to as 'rules') for grant of rebate i.e. only goods are to be exported and not taxes or duties. Thus once the applicant has paid the duty on the export of goods the duty cannot be retained by the department and is to be returned to the applicant otherwise it will amount to collection without the authority of law. Thus the order is liable to be set aside on this ground alone.

4.2 It is humbly submitted that the SCN dated 17.8.2009 merely directed the applicant to explain the circumstances under which the applicant had been forced to clear the said goods without payment of duty and the fixed the date of hearing. The

SCN did not propose to deny the rebate claim. By the order in original the adjudicating authority has rejected the rebate claim without there being any proposal for the same. Thus the Lower Adjudicating Authority had traveled beyond the scope of the SCN. In this regard the applicant places reliance upon the following decisions in which it is stated that if the order passed is beyond the show cause notice such order is unsustainable:

- Crompton Greaves v. CCE 2010 (253) ELT 698
- CCE v. Carborandum Universal Ltd. 2008 (223) ELT A94 (SC)
- SACI Allied Products v. CCE 2005 (183) ELT 225 (SC)
- Kantilal Parekh v. UOI 2003 (158) ELT 678 (Born)
- Shri Govind Synthetics (P) Ltd. v. CCE 2007 (217) E.L.T. 295 (Tn. - Ahmd.)
- Venayaga Spinning Mills Ltd. v. CCE 2006 (205) E.L.T. 625 (Tn. - Chennai)

4.3 The applicants submit that the rebate claims were filed under Rule 18 of the Central Excise Rules 2002, read with Notification No.19/2004-CE(NT) and 21/2004-CE(NT) issued under the aforesaid Rule. Rule 18 clearly envisages that a person who exports the goods would be eligible for getting the benefit of rebate under the said rule, in respect of the duty paid on the finished goods or the materials going into the manufacture of excisable goods exported. For ease of reference, Rule 18 of the Central Excise Rules is reproduced hereunder:

> *18. **Rebate of duty** - Where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.*

The Applicant humbly submits that the fact of goods been exported by the applicant has been accepted by the Adjudicating authority on the basis of the verification report of the Range officer dated 06-08-2009 which was based on the documents which were

furnished by the applicant and after examination it was found correct. The following portion of the Finding of the adjudicating authority in the order-in-original would be enough to indicate the same.

> *"The goods have been cleared from the factory during July 2008 and the actual exports have taken place during July, August and September, 2008. The claim has been filed with this office on 18.5.2009 which is well within one year from the relevant date. The export proceeds have been credited into the assessee's account by Canara Bank, Bashirbagh Branch, Hyderabad."*

4.4 That the above cited portion of the order would indicate that the applicant had fulfilled all the conditions for claiming and getting the refund from the department. The aberration of taking undue credit and utilizing the same for payment of duty at the time clearance has been made good by paying the same in bulk in Feb. 2009. The claim has been made only after the duty has been paid. In other words, when the claim was made by the applicant, the duty had already been paid for the clearances and there was nothing that prevented the department from granting the rebate claim as the rebate is to be granted once the duty has been paid. This is clear from Rule 18 itself. Thus when the duty has been paid irrespective of the time of payment of duty and the goods have been exported rebate claim cannot be denied. The only case of the department is that since the duty has not been paid within the time, the rebate claim is not available which is truly against the provisions of the Rules and the notifications. The only condition under Rule 18 is that the duty should have been paid and the goods should have been actually exported out of the country which the applicant has satisfied. The late payment of duty is of no consequence and the benefit cannot be denied. The Commissioner (Appeals) has completely failed to consider the argument of the applicant and therefore the impugned order is liable to be set aside. Export of goods after payment of duty includes duty paid belatedly. It is humbly submitted that there is an objective for charging interest on delayed payment of duty. The interest is compensatory in nature i.e. to compensate for the loss suffered due to non payment of an amount on a particular date. It is calculated on the basis treating that in case the person would have paid the amount on time the benefit which could have accrued to

that person. Thus the interest is charged from the person to reinstate other person to its original position. Applying the said principle to the facts of the present case it is humbly submitted that on payment of duty with interest the payment of duty will relate back to the original date and will be treated as though the duty has been paid at the relevant date i.e. at the time of export. Thus all the conditions of the provisions and notification has been satisfied and the Commissioner (Appeals) has felt in error in not granting the rebate claim for the export.

4.5 Further reliance is placed on the Board's Circular no. 510/06/ 2000 dated 3.2.2000 wherein it was clarified that where any short payment of duty is noticed and the assessee pays the differential duty prior to sanction of rebate, whether he pays before or after adjudication of the case of short payment. The rebate of the full amount of duty paid on the goods exported (not the fine and/or penalties imposed, if any) should be allowed, provided the initial rebate claim was for the said full duty, or a supplementary claim was filed within the limitation period. Thus according to department's own view where the duty has been short paid and was subsequently paid, the rebate has been allowed in full. In the present case also the duty has been paid even before the adjudication of the SCN issued for wrong availment of credit and before the claim has been made which is within limitation the rebate claim has been illegally denied. Thus the late payment of duty on goods exported will be entitled for the benefit under Rule 18 and the impugned order is liable to be set aside on this ground alone.

4.6 The Commissioner (Appeals) has erroneously ignored the finding recorded by the Hon'ble Settlement Commission and recorded the finding totally contrary to the order passed by the Settlement Commission as though he was sitting in appeal over the order passed by the Hon'ble Settlement Commission. It is humbly submitted that a Show Cause Notice was issued for recovery of duty to the tune of Rs.86,75,640/- and imposition of penalty. However, the SCN has been issued after the payment was made and it is for regularizing the aberration that had taken place due to the actions of a delinquent official of the company. It was not as if the department had found out the mistake and that we had suppressed the same from the department. It was pointed out by the applicant on their own volition thus the wrong credit was regularized by the

applicant. Further the department claim that they had called for the details from the applicant. It is respectfully submitted that the department's claim is false which can be verified from the fact that there is no acknowledgement of the letter purported to have been issued by the range Superintendent.

4.7 Against the SCN issued the applicant preferred a claim before the Settlement Commission. The Hon'ble Settlement Commission while settling the claim has accepted the submission of the Applicant that one of the employees of the company Sri Gnanasekaran has wrongly availed the credit without the knowledge of the management and the department firstly has not issued notice to Sri Gnanasekaran and secondly has not brought any evidence on record to prove that Sri D Bajpai has any knowledge about the wrong availment of the credit by Sri Gnanasekaran. It was further held that during the period August 2008 to January 2009 the company had enough fund and there was no fund crunch and thus the absence of fund was not the reason for wrong availment of credit. The Hon'ble Settlement Commission in its order No.09/2010-C.Ex dated 27.9.2010 has recorded the following finding which are relevant for our purposes:

> *"The Bench, therefore, feels that the fund crunch is not the reason for availment of wrong credit as stated by Sri Gnanasekaran in his statement dated 04-03-2009.*
>
> *The Bench also take note of the fact that no evidence has been produced by the respondent Commissioner to support his contention that Shri Bajpai was aware of the wrong credits being availed by Shri Gnanasekaran in the books of accounts except the statement of Shri Gnanasekaran dated 04-03-2009 which has been recorded after he has left the company....."*

4.8 That even though the Hon'ble Settlement Commission has recorded a finding that there was no fund crunch and the difficulty has arisen only because of the mistake/wrongful credit taken in the books of account at the instance of Shri Gnanasekaran, the Commissioner (Appeals) in its impugned order has illegally recorded a finding that the goods were cleared under fake entries without payment of duty and

at the time of clearance there was actually no balance either in the CENVAT Account or PLA account and the applicant have cleared the goods fraudulently. Thus the finding of the Commissioner (Appeals) is totally perverse and against the order of the Settlement Commission and no motive could be imputed on the applicant as it was found as of fact that the wrong entry has been done at the instance of one of the employees of the company and on coming to know about the same the applicant has immediately paid the amount with interest and it was not at the behest of the department. The Commissioner (Appeals) in passing the impugned has failed to apply any legal provisions and simply on an incorrect finding of fraud as though sitting in appeal over the orders of the Hon'ble Settlement Commission has disallowed the rebate claim. Thus the impugned order is liable to be set aside on this ground alone. It is humbly submitted that once the Hon'ble Settlement Commission has ratified the act of the applicant of regularizing the wrong availment of credit by payment of duty, suo-moto, than the original clearance made for export by the applicant will be regarded as clearance made on payment of duty and thus the rebate under Rule 18 cannot be denied. This is based on the principle of restitution which means that person should be placed on the same position treating as though no irregular or illegal act has been done by the person. Thus the applicant is to be placed on the same position treating as if the goods had been cleared on payment of duty and the rebate claim is valid and justified under Rule 18.

4.9 It is humbly submitted that the monthly payment of duty prescribed under the Rules, is only a procedural requirement under the Rules. The fact is that the duty due has been paid on the finished products. Not following the procedure would be in no way affect the legitimacy of the rebate claim once the duty has been paid beforehand. It is settled position that the assessee should not be deprived of substantive benefit under the Act and the rules, for want of fulfillment of procedural formalities. It is also submitted that not following the procedure in any event would not affect the substantial exemption or incentive eligible under the rules. The export incentives stand on a higher pedestal than normal exemption under notifications issued by CE or Customs Acts. The department cannot deny the export benefits to the applicant on any ground once the

duty has been paid and the export rebate claim, fulfilling all conditions and complete in all respects, is submitted. In the applicant's case, all the substantial procedures have been fulfilled including payment of duty before making the claim. Thus, simply because the amount of duty has been paid late on which interest has also been paid it is incorrect to hold that the applicant has not complied with the conditions of the rule and the notification. The late payment of duty is only a procedural lapse which is further fortified by the Board's circular referred to above which makes the short duty payment later as eligible for rebate claim.

4.10 Further the condition that 'the goods are to be exported after payment of duty' is directory in nature because in so far as payment is concerned no actual payment happens at the time of export and the duty is paid in terms of Rule 8 i.e. on 5th or 6th of the next month. Thus the phrase only indicates that the duty is to be paid on the export goods before claiming the rebate of duty. The time of payment in these circumstances is purely directory in nature and thus for that lapse substantive benefit of rebate claim cannot be denied. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the case of Dalchand v. Union of India 1984 (2) SCC 486.

4.11 The total rebate claim is for Rs.1,23,86,277/- as against admitted Cenvat Credit demand of Rs.87,69,879/- as per settlement commissioner order & paid by applicant. Therefore in any case the remaining amount of Rs.36,16,398/- is withheld without any objection.

4.12 Applicant further submitted vide their letter received on 21.12.12 that there were undisputed and valid credit in their Cenvat credit account at the relevant time. They submitted month-wise credit balance statements and stated as under:

i) 141 exports were made with duty involvement of Rs.1,16,13,341/- with undisputed valid cenvat credit.

ii) 9 exports were made with duty involvement of Rs.7,76,590/- without valid cenvat credit balance.

iii) Total 150 exports were made with duty involvement of Rs.1,23,89,391/-.

5. Personal hearing scheduled in this case on 14.12.12 was attended by Shri P/S.Sastry, Company Secretary on behalf of the applicant who reiterated the ground of revision application. He further submitted that Mr. Gnanasekaran deliberately took invalid Cenvat credits by inflating the credit amounts. The deliberate invalid Cenvat Credit so taken is on 17 input invoices totaling to Rs.86,74,236/-. The applicant company was not initially aware of the deliberate incorrect Cenvat credit entries made by him. As soon as it was found out by the management, the entire of Rs.86,75,640/- with interest of Rs.3,18,191/- was paid in cash through Challan on 2.2.2009. The detection by the internal review and the fact of voluntary payment was intimated to the Department vide aplicant's letter dated 4.2.2009. He added that the total rebate claim is for Rs.1,23,86,277/- as against admitted Cenvat credit demand of Rs.87,69,879/-. Without prejudice, therefore, in any case, the remaining amount of Rs.36,16,398/- is refundable. They pleaded that granting of rebate in no way annuls the settlement reached.

6. Shri S.Eswar Reddy, Assistant Commissioner, Puducherry-II Division appeared for hearing from respondent department side. Department submitted in their counter written reply as under:

6.1 The time of clearance of goods for export, there was actually no balance either in the 'Cenvat account or in the current account (PLA). Only on the strength of wrongly availed Cenvat Credit amount, the appellant had made debit entries as if the goods were cleared on payment of duty. Hence their contention that the wrongly availed credit paid by them in cash at a later date amounts to payment of duty on the date of clearance is illegal and could not be construed as payment of duty under Rule 8.

6.2 A letter dt. 17.8.2009 was addressed to the assessee to explain the circumstances under which they were forced to clear the said goods without payment of duty. The letter was addressed with respect to the subject on rebate of duty paid on goods exported with reference to their rebate application. Hence, the assessee was called for explanations vide the aforesaid letter with regard to payment of duty in as much as it is the duty which is to be granted in rebate. The letter has also alleged the

assessee that the goods were cleared without payment of duty under the ARE-1s mentioned in the rebate. Hence the Order in Original is sustainable and tenable.

6.3 The conditions and procedure relating to export under claim of rebate as per Notfn No.19/2004 CE(NT) dt.6.9.2004 as amended issued under Rule 1 8 of CER, 2002 specifies that "it is essential that the excisable goods shall be exported after payment of duty directly from a factory or warehouse. The condition of 'payment of duty' is satisfied once the exporter records the details of removals in the Daily Stock Account maintained under Rule 10 of the said Rules. Whereas the duty may be discharged in the manner specified under Rule 8 of the said Rule, i.e., monthly basis.' It is evident that the claimants have not paid the duty either at the time of clearance of the goods for export or in a manner specified under Rule 8 of the said Rules. But the duty was paid at a later date and this payment cannot be construed as payment of duty on the goods exported. Notfn No.19/2004 CE (NT) issued under Rule 18 clearly specifies the time of payment of duty as" the excisable goods shall be exported after payment of duty ...". Further, the reliance placed by the assessee on the Board's Circular No.510/06/2000 dt.03.02.2000 and the CESTAT judgement in the case of Sterlite Industries (I) Ltd., Vs CCE, Tirunelveli reported in 2009 (236) ELT 143 (Tn. Chennai) are totally irrelevant to the case in hand. They discuss about the short payment of duty made on the goods exported and belated payment of duty. Whereas, in the present scenario, it is case where the goods were exported on the fraudulently availed Cenvat Credit under fake entries and on being detected the credit availed was made good at a later date with interest. Therefore, the Board's circular and the Hon'ble CESTAT judgement are not at all applicable to the subject case

6.4 The Commissioner (Appeals) before finalizing the plea of the assessee, has clearly look all the relevant points quoted by the assessees and has passed the order based on the judicial facts placed before him. The question that the Commissioner (A) has not considered the order passed by the Settlement Commission, is not correct as the same has been discussed elaborately in the findings. Even though the Settlement Commission granted immunity from penalty in excess of Rs.10,000/- , it has not failed to note that the management of the company cannot be given clean chit for not finding

out wrong credit being availed in the cenvat credit register for a long period of 5 months. The Bench therefore considered that the applicant as well as the co-applicant have made true and complete disclosure of the facts but has not condoned the wrongly availed credit which was claimed to be unnoticed by the management. The Commissioner (Appeal) has rightly pointed that the settlement does not provide any right or privilege subsequently and granting of rebate would lead to condoning the non payment of duty and would annul the exercise of settlement. This is against the purpose of settlement of case when there is clear act of fraud.

6.5 The contention of the appellant that the duty paid belatedly is only a procedural lapse placing reliance on the Hon'ble Supreme Court judgment in the case of Dalchand Vs Union of India 1984 (2) SCC 486 and request for grant of rebate cannot be construed as justifiable, since it is a case of wilful clearance of goods without payment of duty as discussed above.

6.6 The ACCE, Puducherry vide his letter dated 3.1.13 stated as under:

6.6.1 M/s REIL Electricals on their post hearing submissions made vide letter dated 14.12.12 submitted that there are undisputed valid cenvat credits in the CENVAT credit account apart from the CENVAT credits involved in the Settlement Commission Order and submitted three Annexures.

6.6.2 In this regard on verifications of the Annexures submitted by the appellant with the ER1 returns submitted by them it is submitted that the appellant does not have undisputed valid cenvat credit in the cenvat account apart from credit involved in the Settlement Commission order. The Annexures submitted by the appellant are totally incorrect and misleading in as much as the Annexures have been prepared with the credit involved in the Settlement Commission order and intentionally not shown the debits made for duty paid on domestic sales and other debits from their cenvat account during the subject period (July 2008 to January 2009) and projected falsely the availability of credit for each export in Annexure A submitted by them.

6.6.3 If the appellants claim is accepted then there will be default in payment of duty for domestic clearances in each month for the period from July 2008 to January 2009. The detailed work sheet in Annexure-II are enclosed herewith with a request that the same may please be taken into consideration while taking decision in the revision application No.195/511-517/11-RA-Cx.

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

8. On perusal of records, Government observes that rebate claims filed by applicant were rejected by the original authority on the ground that duty was debited without having any balance either in CENVAT Credit Account or in Personal Ledger Account (PLA) to make payment of duty for the goods cleared for export during the material period. The applicants through their Manager Finance had also accepted this fact that there was no sufficient balance in their PLA/CENVAT credit account. However they have paid the duty involved on the goods exported subsequently on 4.2.09 along with appropriate interest. Commissioner (Appeals) too observed that at the time of clearance there was actually no balance either in the CENVAT Account or in PLA. He found the case as a clear act of fraud and held that granting rebate in instant case would lead to condoning the non-payment of duty and annul the exercise of settlement, therefore upheld the impugned order-in-original. Now the applicants have filed these Revision Applications on the grounds stated at para 4 above.

9. The applicant has contended that SCN dated 17.8.09 did not propose to deny rebate claim and therefore the rejection of rebate is illegal, that applicant has fulfilled all the conditions of claim rebate and late payment of duty is of no consequence and benefit cannot be denied, that export of goods after payment of duty includes duty paid belatedly, that as per CBEC Circular No.510/06/2000 dated 3.2.2000 where short payment of duty is noticed and the assesse pays the differential duty prior to sanction of rebate, rebate of the full amount of duty paid should be allowed, that Commissioner (Appeals) has erroneously ignored the finding of Hon'ble Settlement Commission's order No.9/2010-C.Ex dated 27.9.2010.

9.1 In this regard, Government notes that applicant had availed excess cenvat credit of duty paid on raw materials by adding 'O' to actual credit available in the invoices and also availed more credit in some invoices by taking some arbitrary figures. The excess credit thus availed by them amounted to Rs.86,75,640/-. The CCE, Puducherry initiated recovery/penal proceeding vide show cause notice No.28/09 dated 3.8.2009. Department finally worked out the demand of Rs.86,75,640/- plus interest of Rs.318191/- and Rs.94239/- plus interest of Rs.33899/-. The applicant, in Settlement proceeding admitted the total duty demand liability of Rs.8769879/- & interest amount of Rs.352090/-. The said duty demand pertaining to the period July 2008 to December 2008 was paid on 2.2.2009.

9.2 The applicant had filed rebate claims on 18.5.2009, 25.5.09, 5.6.09, 16.6.09, 10.7.09 & 20.7.09 in respect of said exports made during July 2008 to December 2008. The cenvat credit was availed wrongly either by add '0' in the credit figures or by taking arbitrary figure of credit. Applicant has put the blame on their Central Excise Manager Shri Gnanesekaran for taking the invalid cenvat credit. The show cause notice issued for recovery & penal proceedings was got settled vide Settlement Commission's order No.09/2010-C.Ex dated 27.9.10. As per show cause notice applicant had availed cenvat credit fraudulently. The applicant cannot escape his responsibility regarding fraudulent availment of cenvat credit. In this case, fraudulent means were adopted to earn extra cenvat credit without having any valid duty paying documents. So this is not a simple case of short payment but it is a case of clearing goods for exports by showing payment of duty fraudulently. Hon'ble Settlement Commission vide order dated 27.9.10, has imposed penalty on the applicant company. The CBEC Circular dated 3.2.2000 relied upon by applicant cannot be made applicable to default in payment of duty for the reason of fraudulent availment of cenvat credit. Hence the CBEC Circular dated 3.2.2000 cannot be made applicable to this case.

9.3 Applicant relied upon CESTAT judgement in the case of Sterlite Industries (I) Ltd. Vs CCE, 2009 (236) ELT 143 (TRI-Chennai). In the said case, issue related to rebate of duty paid on supplementary invoices raised on finalization of provisional values subsequent to exports and said duty amount was not reflected in the ARE-1. In this

case, transaction value was revised subsequent to export on finalization of value and that differential duty paid subsequent to exports was allowed to be rebated. In fact this case is covered under CBEC Circular dated 3.2.2000. Whereas in the instant case there is no case of clearance of goods on provisional value and subsequently payment of differential duty on finalization of value. Therefore, this case is no help to the applicants.

9.4 The contention of the applicant that they had undisputed credit in the cenvat account during the relevant period does not hold good in view of reply dated 3.1.03 of department wherein the contention of applicant was not accepted. Department had stated that verifications of annexures submitted by applicant along with reply dated 19.12.12, it was found that they do not have undisputed valid cenvat credit in their Cenvat Credit account apart from the credit involved in the Settlement Commission order. He further stated that information in annexures was totally incorrect and misleading in as much as the annexures have been prepared with credit involved in the Settlement Commissioner order and intentionally not shown the debits made for duty paid on domestic sales and other debits and projected falsely availability for each export. In such a situation, it cannot be claimed that even without wrongly availed cenvat credit they could have paid duty from the available balance in the account.

10. In view of above position, it becomes quite clear that goods were cleared for export without payment of duty. The fundamental statutory condition for availing rebate is that duty paid goods are exported out of India. The said condition is not satisfied in this case. Rather the applicant showed payment of duty from the fraudulently availed cenvat credit. As such order for rejection of rebate claim amounting to Rs.87,69,879/- out of total claim of Rs.12386277/- cannot be faulted with. Government upholds the impugned order-in-appeal upto this extent.

11. The lower authorities have not considered the plea of applicant to at least grant remaining rebate claim of Rs.3616398/- since duty on exports relating to said claim was paid from undisputed cenvat credit. Government finds considerable force in the said plea of applicant. Therefore, Government is of the view that the remaining said rebate

claims are admissible to the applicant subject to verification that duty involved was paid from undisputed canvat credit and claim was otherwise in order. Therefore Government directs the original authority to sanction the balance rebate claim of Rs.3616398/-, if the duty was found to be paid from undisputed cenvat credit. The impugned order-in-appeal is modified to this extent.

12. Revision applications are disposed of in terms of above.

13. So ordered.

(D P Singh)
Joint Secretary (Revision Application)

M/s REIL Electricals India Ltd.
Thondamanatham Village
Villianur Commune, Puducherry-605502

Attested

के. रामेश्वरम/K. RAMESHWARAM
विशेष कार्य अधि./OSD-II (RA)
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली / New Delhi

Copy to:

1. The Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Road, Chennai – 600 034.

2. The Commissioner of Central Excise, Pudicherry Cenral Excise Commissionerate, P.B. 104, Goubert Avenue, Beach Road, Puducherry-01

3. The Assistant Commissioner of Central Excise-II, Division-II, 14, Municipal Street, Ajees Nagar, Reddiyarpalayam, Puducherry-605010

4. Shri V.Lakshmi Kumaran, Advocate, B-6/10, Safdarjung Enclave, New Delhi-110029

5. PS to JS(RA

6. Guard File.

7. Spare Copy

ATTESTED

(P.K.Rameshwaram)
OSD (Revision Application)