

REGISTERED
SPEED POST



F.No.195/164/12-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... 24/3/14

ORDER NO. 88 /14-CX DATED 19.03.2014 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 application filed under Section 35 EE of the Central Excise
Act, 1944 against the orders-in-appeal No.523-CE/MRT-II/2011
dated 31.10.2011 passed by the Commissioner (Appeals) Central
Excise, Meerut-II

Applicant : M/s Mentha Allied Products, Rampur, U.P.

Applicants : Commissioner, Customs & Central Excise, Meerut-II.

ORDER

This revision application is filed by M/s Mentha Allied Products Ltd., Rampur, U.P. against the order-in-appeal No.523-CE/MRT-II/2011 dated 31.10.2011 passed by the Commissioner (Appeals) Central Excise, Meerut-II with respect to order-in-original passed by Assistant Commissioner of Central Excise Division, Rampur.

2. Brief facts of the case are that the applicants are engaged in the manufacture of various excisable products namely Menthol, Liquid Menthol Dementholised Peppermint Oil, Menthol Crystals & various forms of essential oils, Peppermint Oil (Ex-Mentha Piperita), Spearmint Oil, Terpene Oil falling under chapter 29,33,38 and 39 of the First Schedule to the Central Excise Tariff Act 1985. The applicants claimed to have exported the excisable goods vide various ARE-1, after payment of central excise duty. The applicant had shown purchase of inputs from various units including the units situated in J&K who were availing area based exemption under Notification 56/2002 & 57/2002-CE both dated 14.11.2002. The applicant was availing cenvat credit of duty paid on the inputs shown to have been procured from the J&K region under the provision of Rule 12 of the Cenvat Credit Rules, 2004. They had exported the above goods vide various ARE-1 under the provision of Rule 18 of the Central Excise Rules 2002 read with Notification No.19/2004(NT) dated 6.9.2004 after paying the duty through Cenvat Credit Account. They had filed various rebate claims in respect of central excise paid on the goods exported. The adjudicating authority processed the rebate claims and sanctioned the same. Being aggrieved with the said orders-in-original, the department filed appeals before Commissioner (Appeals) mainly on the ground that investigation has revealed that the exporter availed cenvat credit in respect of inputs shown as purchased from J&K based units on the bogus invoices. Commissioner (Appeals) decided the cases by way of remand vide order-in-appeal No.147-232-CE/MRT-II/2008 dated 28.11.2008. Against the said order-in-appeal dated 28.11.2008, the applicant filed revision applications before Joint Secretary (Revision Application), who decided the

same vide GOI Order No.391/11-Cx dated 19.4.2011 read with its corrigendum dated 21.9.2011 and directed the Commissioner (Appeals) to decide the case on merit.

3. Commissioner (Appeals) on remand proceedings set aside the impugned order-in-original and allowed department appeal.

4. 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 following common grounds:

4.1 It is also conceivable how rebate claims in respect of finished goods exported on payment of duty duly verified and approved by the Excise & Customs authorities and duly confirmed by bank realization certificates issued by the banks on the basis of which rebate claims were allowed could be regarded as false by a Commissioner who never knew or saw any of the records and documents as well as actual exports made and realization of sale proceeds by the appellant. Such malicious allegations by the Commissioner to justify his own illegal actions to harass the taxpayers for his own personal reasons can never be the basis for an appellate authority to act. The Commissioner of Appeals erred in blindly following the show-cause notice illegally issued by the Commissioner ignoring the real facts, records, documents, evidence and the falsity of the department's case. Therefore, the impugned order is liable to be quashed and declared unsustainable, both on facts and in law.

4.2 The Commissioner (Appeal) did not even care to notice that the figures, details and period as well as the records, documents and issues involved in the rebate claims in appeal before him are materially different from those alleged in the show-cause notice dated 20.5.2010. The appeals filed by the Revenue were filed in 2008 and the show-cause notice of the Commissioner sought to be taken as the basis for the impugned order was issued on 20.5.2010 which was never the basis, ground or issue

agitated in the departmental appeals. Therefore, the Commissioner of Appeal could not have adopted the illegal show cause notice dated 20.5.2010 as the only basis for his decision as if that notice was the issue for decision by him ignoring also the fact that the noticees yet to be adjudicated and the proceedings for the case have also been transferred from Meerut to Delhi because of the taint of the case, records and persons at Meerut. The impugned order must, therefore be vacated.

4.3 It is also pointed out that only in respect of manufacturers of Mentha products falling under jurisdiction of Meerut-II Commissioner, all the problems have been deliberately created in respect of purchases of duty paid inputs by them from the manufacturers thereof in Jammu and other manufacturers in Meerut-I, Lucknow, Kanpur, Allahabad, Ghaziabad, Delhi, Bombay, Ahmedabad and elsewhere in India are not subjected to such hardship and harassment. In reality, it was the other way and, therefore, no judicial notice can be taken of such illegal action of the then Commissioner in Meerut-II and the show cause notice dated 20.5.2010 made by him but not signed or issued because of his Transfer from Meerut to Delhi. Therefore, the reliance on the illegal show cause notice is totally baseless, misplaced and untenable.

4.4 In one of the cases of an identically placed assessee namely, Bhagat Aromatics Ltd., C-33&34, Sector-7, Noida, the Commissioner of Central Excise, by a clear report dated 6.5.2010 pointed out that the entire case of the Revenue is false.

4.5 The Petitioner also filed copies of the orders passed in revision in the case of CCE Vs. Nav Bharat Impex Final Order No.1169/2006 dated 27.12.2006 as also the decision of the Tribunal in the case of Nav Bharat Impex Vs. CCE vide Final order No.650-651/08-Ex dated 21.8.2008. The Delhi High Court in the case of Nav Bharat Impex Vs. CCE in Civil Writ petition No.8753/2009 dated 13.5.2010 has also directed the above orders to be implemented by the Revenue. Reliance is also being placed on the decision of the Bombay High Court in Union of India Vs. Sharp Menthol India Ltd. (2011) 270

ELT 212 which is directly on the issue for allowing rebate of duty of Excise paid on goods exported. Further, the decision of the Tribunal in the case of CCE Vs. Sharp Menthol India Ltd. (2009) TIOL 1500(CESTAT-Mum.) is also in favour of the assessee and applicable.

4.6 The issue in dispute sought to be agitated by the Revenue stands fully and squarely decided in favour of the assessee and against the Revenue both by the Revisionary authority and by the Appellate Tribunal as well as the High Courts, as indicated above, and hence the Commissioner of appeal was duty bound to have followed the above binding decisions and ought to have rejected the departmental appeals as devoid of merit and also as being nothing but an attempt to harass the Petitioner and to withhold moneys of the Petitioner for Indefinite period illegally. Failure to do so has vitiated the impugned order which is liable to be set aside.

4.7 The Revenue in its appeals before the Commissioner of appeal has not brought out any specific factual or legal incorrectness or infirmity in the orders of the Asstt. Commissioner granting rebate claims of the assessee. Merely because the department does not want to grant the refund and wants to continue its illegal action of collection and recovery of moneys on the one hand and refusing refunds on the other, to meet predetermined revenue targets and to harass the taxpayers, the appellate authority cannot accept the claims of the revenue on the alleged plea of investigation being taken up. There is nothing to investigate in the matter and that too by a Supdt who does not know either facts or law correctly when the issue stands fully decided in favour of the assessee both by the Revisionary authority and by the Tribunal. There can be no justification for any claim of making investigation in respect of issues already decided by higher authorities as no lower authority can claim to make investigation of such concluded matters as otherwise there is no end to any issue being decided or settled and no finality to any proceeding.

4.8 The allegation of fraud is too general and vague and had been raised by the Revenue not against the assessee but without any basis or justification and also without any supporting evidence as the Revenue itself does not know what is right or wrong in its claims. Such allegations or assumptions can never be the basis for either filing an appeal or deciding an appeal and hence the impugned order passed by the Commissioner of appeal must be set aside and quashed and the orders in original should be restored as they were rightly passed by the Asstt. Commissioner.

5. The applicants further vide their written reply dated 14.10.2013 mainly stated that:-

5.1 There are plethora of evidences which clearly proves that the cenvat credit availed by them was bonafide and proper. The department issued show cause notice alleging fraudulent availment of cenvat credit without any evidence/material brought on record in support of the said allegation. As such, show cause notice issued for recovery of cenvat credit from applicants is bad in law. The applicant has relied upon various case laws in favour of their contention.

5.2 All the conditions, procedure specified in Notification No.19/04-CE (NT) dated 6.9.04 are complied with. There is neither any finding in the order-in-original nor any averment in the revision application that any condition or procedure of said Notification has not been complied with.

5.3 The main contention of the department in its revision application is that an investigation regarding alleged fraudulent availment of CENVAT Credit was in progress and the investigation has revealed that payment of duty was from the accumulated credit which was fraudulently availed. It is the allegation against the applicants that they had knowingly and willfully indulged in fraudulent availment of CENVAT Credit on the strength of bogus/fake CENVAT invoices against which no goods were received by them in their factory and utilized the same for payment of duty on goods cleared for

taken on the strength of fake invoices without receipt of inputs is completely baseless. It is emphasized that no evidence/material has been brought on record in support of the said allegation at all and the entire show cause notice has been issued on assumptions and presumptions. Non-receipt of inputs alongwith the Invoices has been presumed by the department on the basis of some investigation carried out about the supply of crude mentha oil by the farmers based in U.P. It is mentioned that the Department has drawn an unwarranted inference that since crude mentha oil was not supplied by the farmers, the manufacturers at Jammu could not have manufactured Menthol solution, Menthol flakes, DMO etc. and supplied to M/s MAPL. There is no finding of any competent authority on the said issue. In absence of any such finding, it cannot be presumed by the department that the invoices issued by those manufacturers were fake and the applicants had not received the goods in their factory. It is settled law that the show cause notice cannot be issued on mere assumptions and presumption. The Supreme Court has held in Oudh Sugar Mills Ltd. Vs Union of India, 1977 (2) ELT (J172) (SC) that the findings which has been arrived at without any tangible evidence and is based only on inferences involving unwarranted assumptions, is vitiated by an error of law.

6. Personal hearing was scheduled in this case on 21.2.13, 8.3.13, 15.10.13 and 10.3.14. Hearing held on 10-3-2014 was attended by Shri V.K.Agarwal, Advocate and Shri Satyanarain, General Manager (Operation) of applicants company on behalf of the

applicants who reiterated the grounds of revision application/submissions made in their written replies. Nobody attended hearing as behalf of department.

Shri V.K.Aggarwal made detailed submissions and submitted written brief highlighting following points:

- (a) Issuance of SCN does not amounts to adjudication and determination of issue.
- (b) The procedure mentioned in the Notification No.19/2004-(NT) has been completely followed by the applicants as there is no finding in the impugned order that the specified procedure has not been followed by the applicants. It is submitted that admittedly the applicants have filed all the rebate claims along with original copies of all the applications and the Jurisdictional Assistant Commissioner has not found any discrepancy while comparing the same with duplicate and triplicate copies of the applications. In view of this, there was no authority with the Commissioner (Appeals) under the law to reject the rebate claims.
- (c) It is submitted that in any case, the allegations that the CENVAT credit was taken on the strength of fake invoices without receipt of inputs is completely baseless. It is emphasized that no evidence/material has been brought on record in support of the said allegation at all and the impugned order-in-appeal has been issued on assumptions and presumptions. It is emphasized that all the consignments were transported by Trucks and the Truck Registration numbers were duly mentioned in the invoices. The enquiries made from Regional Transport Authorities have revealed that the vehicles used were trucks only. Regional Transport Officer, Jammu Division vide letter dated 15.11.2008 has given a list of Truck Numbers and name and address of their owners. However, the Department has not brought any material on record by way of the statement of the Truck owners to the effect that their trucks had not transported the goods from the premises of the input suppliers from Jammu to the factory premises of Applicants at Rampur. In any case, the inference drawn by the Department is belied from the enquiry made by the officers from the Deputy Commissioner Toll Post

Lakhanpur which is the only way to cross J&K State to reach the consignments in U.P. The Dy. Excise Commissioner Toll Post Lakhanpur has mentioned in his reply that "all taxable goods moving across the toll post are recorded dealerwise at the Commercial Tax Check Post Lakhanpur without clearance of which no taxable goods can move across." An attempt has been made by the department to dilute the Toll Post records since the particulars of goods are entered in the computerized record at the Toll Post Lakhanpur on the basis of declaration made by the incharge of the vehicle as also the documents produced by him. It is also mentioned that the Applicants were, as per the direction of the Superintendent Preventive Central Excise Division, Rampur, sending the intimation regarding receipt of inputs from J&K for the verification by the officers. It is, further, mentioned that the Central Excise officers (Preventive) Rampur, had drawn the sample of the Applicants final products on 22.06.2006. This clearly proves that the Applicants were receiving Menthol Solution, Menthol Flakes and DMO etc. from Jammu based firms and M/s MAPL had manufactured their final products out of the said inputs. Above all, M/s Nanda Mint & Pine Chemicals Ltd. have requested the Dy. Commissioner Commercial Taxes, Check Post lakhanpur, under their letter dated 25.11.2009 as to whether the consignments have passed through Toll Post, takhanpur) It has been mentioned by M/s Nanda Mint & Pine Chemicals, in their letter that the information collected by the Central Excise officers from Toll ost is not matching with the details noted in the documents received with goods by M/s MAPL. M/s Nanda Mint & Pine Chemicals had enclosed a list of details like name of the consignee, consignor, goods, Invoice No., value and Truck numbers and GR Number for verification for the period from July, 2005 to December, 2008. The Deputy Commissioner, Check Post, Lakhanpur under letter No. CTL/2908 dated 26.11.2009 has intimated that the export consignments as mentioned in the annexure of 13 pages have been duly entered in their records during July, 2005 to December, 2008. It may please be seen that these annexure contains all the consignments received by the Applicants from Jammu and there was not a single consignment which has not passed through the Toll Post, Lakhanpur. Similarly other suppliers from Jammu have got the confirmation from Toll

Post, lakhanpur about the passing of consignments from the said suppliers to MIs MAPL, Rampur. Further, Assistant Excise & Taxation Commissioner (C) Patiala have confirmed the passing of all consignments from Jammu to the Applicants. The Applicants further submit that as they were purchasing their inputs from units in Jammu & Kashmir, they were submitting Form 31 under U.P. Trade Tax Rules, 1948. This Form is for import of goods into U.P. from other States. This Form contains the description and quantity of goods, values of goods. Invoice No. of the consignor, signature of both consignor and consignee and Registration Number of Vehicle. The Form is checked by the Commercial Tax Officer of U.P. From the said Form it is further established that the inputs were duly dispatched by the Units in J&K and the said inputs were duly received by M/s MAPL. In the present matter also, the department has not proved that any other alternative material was received by the Applicants and used in the manufacture of final products which have been cleared on payment of duty for home consumption and for export.

d) It is submitted that the rebate claims were sanctioned by the Assistant Commissioner after verifying the payment of duty by units based in Jammu and Kashmir. The Assistant Commissioner has specifically mentioned in the order sanctioning the rebate that "The invoices of procurement of inputs and CENVAT credit taken thereof by the party was got verified from the originating Range at Jammu and was found to be in order."

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

8. On perusal of records Government observes that the original authority initially sanctioned rebate claim. The department preferred appeal against impugned orders-in-original on the ground that duty was paid on exported goods from fraudulently availed cenvat credit in respect of inputs shown to have been procured from various units including the units situated in Jammu & Kashmir who were availing area based

exemptions but actually no inputs were received by the applicant. Commissioner (Appeals) decided the cases by way of remand vide order-in-appeal No.147-232-CE/MRT-II/2008 dated 28.11.2008. Against the said order-in-appeal dated 28.11.2008, the applicant filed revision applications before Joint Secretary (Revision Application), who decided the same vide GOI Order No.391/11-Cx dated 19.4.2011 read with its corrigendum dated 21.9.2011 and directed the Commissioner (Appeals) to decide the case on merit. Commissioner (Appeals) in remand proceedings set aside the impugned orders-in-original and allowed department appeals. Now, the applicants have filed this revision application on the grounds stated at para (4) above.

9. Government observes that the applicants paid duty on exported goods, from cenvat credit availed in respect of inputs shown to have procured from J&K based manufacturers. Commissioner (Appeals) has recorded in his finding in order-in-appeal that department has carried out a detailed investigation and issued a show cause notice dated 20.5.2010 to the applicants and other parties proposing recovery of cenvat credit of Rs.27,23,76,070/- taken by them during the period April' 2005 to March' 2009 and also for recovery/rejection of rebate claims of Rs.147702866/- which pertained to duty paid out of the cenvat credit fraudulently availed, and rebate claims erroneously sanctioned during April' 05 to March' 09. The payment of duty on the exported goods is in dispute as the duty was alleged to have been paid from wrongly availed Cenvat credit. The applicants has mainly pleaded that they have taken cenvat credit legally and payment of duty is in order, that there is no violation of condition and procedure laid down in Notification No.19/04-CE (NT) dated 6.9.04.

10. The governing statutory provisions of grant of rebate are contained Rule 18 of Central Excise Rules, 2002 which reads as under:

"Rule 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, any fulfilment of such procedure, as may be specified in the notification."

The condition 2(a) of Notification No.19/04-CE(NT) dated 6.9.04 stipulates that all excisable goods shall be exported after payment of duty directly from factory. The said provisions stipulate that rebate shall be granted of duty paid on excisable goods exported. In this case, payment of duty is in dispute and case for recovery of Cenvat credit & erroneously sanctioned rebate claims is pending adjudication before Commissioner (Adj.) New Delhi. Though there is no finding in the impugned order-in-appeal regarding any violation of condition/procedure as laid down in Notification No.19/04-CE (NT) yet the fact remains that duty paid nature of the exported goods is still in dispute. The fundamental condition for granting rebate is that duty paid nature of exported goods is established. The proceedings have been initiated vide the impugned show cause notice dated 20.5.10 for recovery of wrongly availed cenvat credit as well as erroneously sanctioned rebate claims during the period April' 05 to March' 09 and adjudication proceedings are pending before Commissioner of Central Excise. In view of this position it is premature to decide the admissibility of rebate claim till the show cause notice dated 20.5.10 pending adjudication before Commissioner of Central Excise (Adj), New Delhi is decided. The Government does not find force in argument of applicants that issue of demand of cenvat credit and rebate claims are two separate proceedings as the status of payment of duty will be decided in the said ongoing adjudication proceedings. As such, case is required to be remanded for de novo consideration in the light of outcome of adjudication proceedings in show cause notice dated 20.5.10.

11. Under such circumstances, in the interest of justice, Government sets aside the impugned orders and directs the original authority to decide the rebate claims on the basis of adjudication order to be passed in the ongoing adjudicating proceedings in

Show Cause Notice dated 20.5.10 which is pending before CCE (Adj.). A reasonable opportunity of hearing will be afforded to the parties before deciding the case.

12. Revision Application is thus disposed off in above terms.

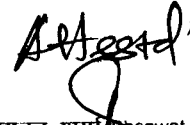
13. So, ordered.



(D.P.SINGH)

Joint Secretary (Revision Application)

M/s Mentha & Allied Products Ltd.,
Rahe-Raza, Civil Lines,
Rampur-244901 (UP)



(भागवत शर्मा/ Ashwath Sharma)
सहायक ~~आयुक्त~~/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/ New Delhi

Order No. 88/14-CP dt. 19.03.14

F.No.195/164/12-RA

Copy to:

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2. Commissioner (Appeals), Customs & Central Excise, Meerut-II, (Opp. Shaheed Smarak) Delhi Road, Meerut, UP.
3. Assistant Commissioner, Customs & Central Excise Division, Rampur
4. Shri V.K.Agrawal, Advocate, C/o M/s Mentha & Allied Products, Civil Lines, Rampur
- ✓ 5. PA to JS(RA)
6. Guard File
7. Spare Copy.

ATTESTED



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