

**REGISTERED**  
**SPEED POST**



No.F.195/255/12-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue

31/3/14

ORDER NO. 99/2014 DATED 26.03.2014 OF THE GOVERNMENT OF INDIA FILED UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944 PASSED BY SHRI D.P.SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA

Subject : Revision application filed under Section 35EE of the Central Excise Act, 1944 against the order-in-appeal No.193/2011 dated 26.12.11 passed by the Commissioner of Central Excise (Appeals), Mangalore

Applicant : M/s Plansee India High Performance Material Pvt. Ltd., Mysore

Respondent : Commissioner of Central Excise, Mangalore

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ORDER

This revision application is filed by M/s Plansee India High Performance Material Pvt. Ltd., Mysore against the order-in-appeal No.193/2011 dated 26.12.11 passed by the Commissioner of Central Excise (Appeals), Mangalore with respect to order-in-original passed by the Assistant Commissioner of Central Excise, Division S-1&S-2, Mysore-I.

2. Brief facts of the case are that the applicants are manufacturers of excisable goods falling under Chapter 81 of the CETA 1985 and are availing cenvat credit facility under the Cenvat Credit Rules 2004. The applicant had filed rebate claim of Rs.310452/- in respect of goods exported vide ARE-1. The adjudicating authority observed that the applicant had encircled the FOB value printed on the Shipping Bill No.2399992 dated 21/12/2009 (ARE-1 No.552/19/12/09) shown as Rs.136683.44 and hand written as Rs.996413.09, leading to an excess value of Rs.859729.65 with an intention to avail more rebate through cash. In this regard, a show cause notice was issued on 05/08/2010 as to why an amount of Rs.70,464/- being the excess rebate claimed on the excess value should not be deducted from the gross claim of Rs.3,10,452/- and penalty should not be imposed under Rule 27 of CER,2002 for wrong declaring the FOB value. The adjudicating authority in his impugned order had sanctioned rebate an amount of Rs.2,38,307/- in cash and balance amount of Rs.72,145/- in cenvat credit account (Total Rs.3,10,452/-) and also imposed penalty of Rs.5000/- under Rule 27 of CER,2002 for declaring FOB value wrongly in the Shipping Bill and also for showing negligence in replying to SCN and not appearing for personal hearing on date fixed for personal hearing.

3. Being aggrieved by the said order-in-original the applicant filed appeal before Commissioner (Appeals) who rejected the same.

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

4.1 The Applicant submits that the freight and insurance amount in the shipping bill stated as Rs.18,610.00 and Rs.559.00. Whereas while writing the FOB value in the shipping bill after deducting the freight and insurance was stated as Rs.1,36,683.00 instead of Rs.9,96,413.00. The Applicant submits that figure was corrected and signed by the Superintendent of customs Air Cargo Complex, Bangalore and has also put a Rubber stamp of the department even before the refund application is made the Applicant and much before the refund application. The Applicant submits that corrected error was duly authenticated and hence the FOB value to be considered the correct amount as stated in the Shipping bill after rectification which in turn tallies with the Invoice.

4.2 The Applicant submits that the figure wrongly mentioned was due to the conversion of the freight and insurance amount in Rupees thinking it is in dollar. The freight amount being Rs.18,610.00 and Insurance being Rs.559.00 and the dollar rate being Rs.45.850 per Dollar converted which works out to Rs.8,78,899.65 and the said amount after deducting from the invoice value of Rs.10,15,582.04 for arriving at the FOB value mentioning as Rs.1,36,683.44 was first written and later found the mistake and it was corrected FOB value as Rs.9,96,413.09 since the freight amount was in Rupees. The Applicant submits that the Commissioner (Appeals) has not appreciated that the mistake (which was corrected even before filing of the refund claim) in mentioning of the figure in the shipping bill which should tally with the ARE-1.

4.3 The Applicant submits that the Assistant Commissioner had mentioned in the order that the figures have been altered with an intention of availing higher credit in cash, which has also been confirmed by the Commissioner (Appeals), Mangalore,

but has not referred to the actual freight and insurance paid to confirm the correctness of the value shown. The Applicant submits that the freight and insurance charges actually incurred were available with the Assistant Commissioner and also was brought to the notice of the Commissioner (Appeals). Both the authorities have conveniently not mentioned in their order the correct freight and insurance amount paid referring the bills to substantiate the stand that the intention of the applicant was to avail higher refund of duty by cash.

4.4. The Applicant submits that the refund being delayed intentionally, interest for the delay period is eligible and the direction may be given to the authority to rectify the refund amount and interest @ 24% P.A may be allowed till the date of refund cheque is issued to the Applicant.

5. Personal hearing was scheduled in this case on 14.2.2014 and 21.3.14 (Chennai). The hearing held on 21.3.14 at Chennai was attended by Shri S.Loknath, Consultant on behalf of applicant who reiterated the grounds of revision application.

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

7. On perusal of records, Government notes that out of total rebate claim of Rs.310452/- in respect of goods exported vide ARE-1 No.552, 554, 574, 583 and 586, original authority sanctioned the claim of Rs.238307/- and balance amount of Rs.72145/- in respect of ARE-1 No.552 was credited in their cenvat credit account due to changes made in the FOB value of shipping bill. The Commissioner (Appeals) upheld the said order-in-original. Now, the applicant has filed this revision application on grounds stated above.

8. Applicant has stated that in the shipping bill No.2399992 dated 21.12.2009 (pertaining to ARE-1 No.552/19.12.09), the freight and insurance figure of Rs.18160/- and Rs.559/- were wrongly mentioned as in US dollars. The CIF value is

Rs.1015582/- and after deducting Rs.18160 + 559 =18719, the FOB value is Rs.996413.09. Government notes that for CIF value of Rs.1015582/- the freight of insurance amount cannot be Rs.878899.65 (USD18160+559). The said amendment in shipping bill is stated to be carried out by Customs Officer under his signatures and stamp. The lower authorities have not considered said explanation at all. There appears a merit in the pleading of the applicant and therefore case is required to be remanded back for fresh consideration of claim in the light of said explanation.

9. In view of above position, Government set aside the impugned orders to the extent of rejecting rebate claim of duty paid in respect to excisable goods exported vide ARE-1 No.552 dated 19.12.09 & shipping bill No.2399912 dated 21.12.09 and remands the case back to original authority for fresh consideration in terms of observations made above. A reasonable opportunity of hearing will be afforded to the concerned parties before deciding the matter.

10. The revision application is disposed off in above terms.


11. So, ordered.



(D.P.SINGH)

Joint Secretary (Revision Application)

M/s Plansee India High Performance Material Pvt. Ltd  
(Formerly known as Wolfra Tech Pvt. Ltd.)  
B-7, Hebbal Industrial Estate  
Mysore-570016



(मागवत अनूप शर्मा Anupam 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. 99/14-Cx dated 26.03.2014

Copy to:

1. Commissioner of Central Excise & Service Tax, Mysore Commissionerate, Vinaya Marg, Siddhartha Nagar, Mysore-570011.
2. Commissioner (Appeals), Central Excise, V Floor, Trade Centre, Bunts Hostel Road, Mangalore - 575003.
3. Asstt. Commissioner of Central Excise, S1, S2, Vinaya Marg, Siddhartha Nagar, Mysore-570011.
4. PS to JS (RA)
5. Guard File.
6. Spare copy

ATTESTED



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