



REGISTERED
SPEED POST

F.No. 198/17/14-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.....

ORDER NO. 150/2018-CX dated 5-3-2018 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI RAJPAL SHARMA, ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed, under section 35EE of the Central Excise Act 1944 against the Order-in-Appeal No. MRT-EXCUS002-APP-182/2013-14 dated 26.11.2013 passed by the M/s Aroma Chemicals, Moradabad C/O M/s Lasa Consultancy (P) Ltd.

APPLICANT : The Commissioner of Central Excise, Meerut-II

RESPONDENT : M/s Aroma Chemicals, Moradabad

ORDER

A Revision Application No. 198/17/2014-RA dated 27.02.2014 is filed by Commissioner of Central Excise, Meerut-II, against the O-I-A No. MRT-EXCUS002-APP-182/2013-14 dated 26.11.2013, passed by the Commissioner of Central Excise (Appeals), Meerut-II, whereby the Assistant Commissioner's order allowing rebate of duty is upheld and the department's appeal against the Assistant Commissioner's order is rejected.

2. A personal hearing was fixed in this case on 22.02.2018. However, no one for the applicant or the respondent M/s Aroma Chemicals, Moradabad, appeared for the personal hearing. Further no request for any other date is also received, from which it is implied that they are not interested in availing personal hearing. Hence the Revision Application is taken up for decision on the basis of available records.

3. The Revision Application is filed mainly on the grounds that the respondent has not put forth the actual facts before the Hon'ble High Court that the documents on the basis of which they preferred the rebate claims have been disputed in a show cause notice issued to them which is still pending; that the order of the Commissioner (Appeals) dated 30.10.2007 has been set aside by Government of India vide order dated 16.11.2010; that the matter stands remanded to the adjudicating authority for de novo consideration by order dated 16.11.2010; that by not informing these facts the respondent has misled the Hon'ble High Court; that the department has filed a Revision Application before the Hon'ble High Court against its order dated 26.4.2013 and on these grounds the JS (RA)'s order dated 16.11.2010 should be made effective. Thus, the sum and substance of the Revision Application is that the Government of India should sit over the decision of the Hon'ble High Court dated 26.04.2013 and the adjudicating authority should be directed to decide the case afresh as per JS (RA)'s earlier order dated 16.11.2010. The above stated grounds were

raised by the applicant before the Commissioner (Appeals) also but these have been rejected in a well-spoken order. The Commissioner (Appeals) has categorically observed that the adjudicating authority was legally bound to follow the order of the Hon'ble High Court's order dated 26.4.2013 to maintain judicial discipline as per Supreme Court's decision in the case of Union of India Vs. Kamalakshi Finance Corporation Ltd., 1991(55) ELT 433(SC) and the order of the Joint Secretary dated 16.11.2010 had become irrelevant after the High Court had passed the above order directing to pay refund duty to the respondent. The reasonings given in the O-I-A have not been refuted in the Revision Application and it is not explained as to how the adjudicating authority and the Commissioner (Appeal) could deny the rebate of duty to the respondent after having received the order of the High Court expressly directing to give rebate of duty within one month's time. The issue regarding fraudulent availment of CENVAT credit by the respondent and utilisation of wrongly availed CENVAT credit for payment of duty on the exported goods is still at allegation stage only as per revision application itself and it may have been certainly brought to the notice of the Hon'ble High Court by the applicant and these grounds cannot be invoked once again before the Government for corrective actions against the High Court's order. Moreover, the applicant has stated to have already filed a Revision Application before the High Court of Allahabad for review of its earlier Order dated 26.04.2013. But despite of above narration, the fact of the matter as on date is that the High Court has already passed an order dated 26.04.2013 directing the adjudicating authority to disburse rebate of duty within one month's time, the order of the High Court has not been stayed or modified till date, the JS(RA)'s earlier order dated 16.11.2010 had become irrelevant soon after the Hon'ble High Court has issued order and the adjudicating authority has already sanctioned rebate of duty in compliance of the High Court's order. The Revision Application undoubtedly seeks to re-opening the High Court's order for which the Government is not having any

legal jurisdiction. Hence, the Government does not find any fault with the order of the Commissioner (Appeals) and the Revision Application is filed by the applicant without appreciating the hierarchy of judicial institutions and need to maintain judicial discipline at each level.

4. Accordingly, the Revision Application is rejected.

(Signature)
5.3.18

(R. P. SHARMA)

ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA

The Commissioner of Central Excise,
Customs & Service Tax Hapur(Meerut-II),
Opposite Shaheed Smarak (Near Ashok Ki Lat),
Delhi Road, Meerut (UP)-250 001

ORDER NO. 150/2018-CX dated 5-3-2018

Copy to:-

1. M/s Aroma Chemicals, Sidhi Sadan, Tube Well Colony Tiraha, Moradabad.
2. The Commissioner (Appeals), Customs & Central Excise, Meerut-II.
3. The Assistant Commissioner, Customs & Central Excise Division- Moradabad.
4. M/s Lasa Consultancy (P) Ltd., D-60, Sector-2, Noida.
5. PS to AS(RA)
- ✓ 6. Guard File.
7. *Spare*

ATTESTED *5.3.2018*

(Debjit Banerjee)
STO (REVISION APPLICATION)