

REGISTERED
SPEED POST



F.No.195/1501/11-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.....17/6/13

ORDER NO. 566 /13-CX DATED 14.06.2013 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 orders-in-appeal No.805-CE/MRT-II/2011 dated 30.8.2011 passed by the Commissioner (Appeals) Central Excise, Meerut-II

Applicant : M/s Quality Flavours & Industries, Moradabad

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

ORDER

This revision application is filed by M/s Quality Flavours & Industries, Moradabad against orders-in-appeal No.805-CE/MRT-II/2011 dated 30.8.2011 passed by the Commissioner (Appeals) Central Excise, Meerut-II with respect to order-in-original passed by Assistant Commissioner of Customs & Central Excise, Moradabad.

2. Brief facts of the case are that the applicants has filed refund claim of Rs.35,596/- of unutilized cenvat credit of taken on inputs under rule 5 of the Cenvat Credit Rules 2005. The refund was initially sanctioned by the original authority vide impugned order-in-original. The department filed appeal before Commissioner (Appeals) against impugned order-in-original, which was remanded back by the Commissioner (Appeals) vide order-in-appeal No.70-CE/MRT-II/2009 dated 29.1.2009. The applicant filed revision application No.195/126/09-RA against the said order-in-appeal dated 29.1.2009, before this authority. Government of India vide Order No.379-390/2011-RA-Cx dated 19.4.2011 decided the said revision application along with other revision applications and remanded the case back to Commissioner (Appeals) to decide the same on merit. Commissioner (Appeals) rejected the appeal of the applicants on merit.

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

4. Personal hearing was scheduled in this case on 21.2.13 & 26.2.13. Hearing held on 26.2.13 was attended by Shri S.K.Mathur, Advocate and Shri S.C.Dabral, Consultant on behalf of the applicant who reiterated the grounds of revision application. Shri D.D.Mangal, Assistant Commissioner, Moradabad attended hearing on 21.2.13 and stated that order-in-appeal being legal and proper, may be upheld.

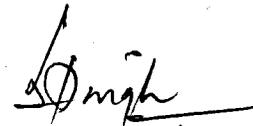
5. Government has carefully gone through the relevant case records and perused the orders-in-original and orders-in-appeal.

6. Government observes that the issue involved in this revision application is refund of unutilized cenvat credit under rule 5 of the Cenvat Credit Rules, 2004. Government finds that in terms of first proviso to Section 35B(1) of the Central Excise Act, 1944, read with provision of Section 35EE of Central Excise Act 1944, no revision application is maintainable before Central Government against order-in-appeal relating to said issue.

7. By reading of above said provision, it is quite clear that appeal against the order of Commissioner (Appeals) on the issue involved in this impugned case does not lie before Central Government under Section 35EE of Central Excise Act 1944. However, the appeal against said order-in-appeal lie before Hon'ble CESTAT. During first round of revisionary proceedings, the Government's observation was limited to aspect of power of remand of Commissioner (Appeals) and aspect of maintainability of case on merit before this authority was not looked into by this authority at that time.

8. This Revision Application is not maintainable under Section 35EE before Central Government and thus stands dismissed.

9. So ordered.



(D.P.SINGH)

Joint Secretary (Revision Application)

M/s Quality Flavours & Industries
Mora, Industrial Estate, Prem Nagar
Export Zone, Kanth Road
Moradabad



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

GOI Order no. 566/13-92 dt. 14.06.13

F.No.195/1501/11-RA

Copy to :

1. Commissioner Customs & Central Excise, Meerut-II, (Opp. Shaheed Smarak) Delhi Road, Meerut, UP.
2. Commissioner (Appeals), Customs & Central Excise, Meerut-II, (Opp. Shaheed Smarak) Delhi Road, Meerut, UP.
3. Assistant Commissioner, Customs & Central Excise Division, Moradabad
- ✓ 4. PA to JS(RA)
5. Guard File
6. Spare Copy.

ATTESTED


17/6

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