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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**Office of the Principal Commissioner RA and  
Ex-Officio Additional Secretary to the Government of India**  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. NO. 195/749/12-RA/915

Date of Issue: 24<sup>th</sup> January 2018

ORDER NO. 05/2018-CX (WZ) /ASRA/Mumbai DATED 23.01.2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s. Sangameshwar Precession Works Pvt. Ltd., Aurangabad.

Respondent: Commissioner of Central Excise, Customs & Service Tax,  
Aurangabad.

Subject : Revision Applications filed, under section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No.US/ 733 /RGD/2012 dated 30.10.2012 passed by the Commissioner of Central Excise (Appeals-II).

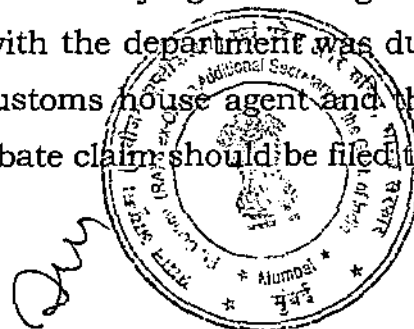


**ORDER**

This revision application is filed by M/s Sangameshwar Precession Works Pvt. Ltd., Aurangabad (hereinafter referred to as "the applicants") against the Order-in-Appeal No. AGS(20) 15/2011 dated 08.02.2011 passed by the Commissioner (Appeals) of Central Excise & Customs, Aurangabad in respect of the Order-in-Original No. 2329-2333/RBT/2010 DTD 15.11.2010 passed by the Assistant Commissioner of Central Excise & Customs, Aurangabad-II Division.

2. Brief facts of the case are that the applicants are engaged in the manufacture of Motor Vehicle parts and Washing Machine parts. They are exporting the motor vehicle parts on payment of duty under claim of rebate. The appellants exported goods under self-removal procedure. They filed FIVE rebate claims involving total Central Excise Duty of 73,904/-. The Assistant Commissioner, Central Excise and Customs, Aurangabad-II Division vide OIO No. 2329-2333/RBT/2010 dated 15.11.2010 rejected all the rebate claims on the grounds that the applicants had contravened the provisions of Notification no. 19/2004 —CE (NT) dated 06.09.2004 as amended issued under Rule 18 of Central Excise Rules 2004 in as much as they had failed to follow the procedure no. 3 (a) (xi) of the said notification. The Assistant Commissioner also held that the rebate claims were time barred as they were filed after expiry of one year from the date of shipment of goods for export. The relevant date as per section 11 B of the Central Excise Act is one year from the date of shipment.

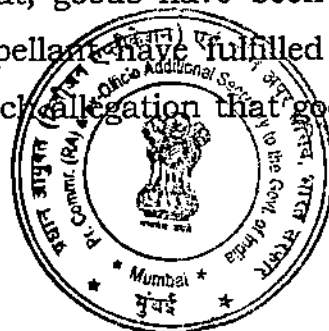
3. Being aggrieved by the said Order in Original dated 15.11.2010, the applicants have filed the appeal before Commissioner (Appeals) mainly on the grounds that the goods were exported from the factory under SRP and the said goods were duly sealed; that they had debited the duty as per Rule 8 of Central Excise Rules 2001; however they had wrongly mentioned the current entry number available at the time of export of goods; that there is no allegation that the applicant had not debited the duty against the goods exported; that the delay in filing rebate claim with the department was due to non-receipt of document in time from the customs house agent and the appellants were under bonafide belief that no rebate claim should be filed till



all documents which are required for filing rebate claim, are received; that they relied upon the case law reported in 2003 (158) ELT 274 (BOM) in the case of M/s. Uttam Steel Limited v/s Union of India. Commissioner (Appeals) while upholding the Order in Original No. 2329-2333/RBT/2010 dated 15.11.2010 passed by the Assistant Commissioner, Central Excise and Customs, Aurangabad-II Division observed that the case law reported in 2003 (158) ELT 274 (BOM) in the case of M/s. Uttam Steel Limited v/s Union of India, is not applicable to the present appeal, as the appellants not only delayed the filing of rebate claims but also had several other procedural lapses due to contravention of provisions of notification no. 19/2004 dated 19.09.2004. The case law deals with a situation where there was only one lapse i.e. delay in filing the rebate and has not dealt with the 'multiple lapses' situation. When the claims are hit by limitation itself, it is not necessary to examine the other reasons and the appeal filed by the appellants against said OIO is rejected.

4. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds

- 4.1 The Impugned order passed on the basis of assumptions and presumptions, conjectures and surmises, hence deserve to be quashed and set aside.
- 4.2 The order passed by learned Commissioner (Appeal) is not speaking order; it ought to have considered the submission made by the appellant. It ought to have considered that, the appellant is small-scale unit having turnover below 100 lakhs, further, no such allegation or finding that, goods have not been exported, duty have not been paid. Rejected the refund claim by Commissioner (Appeal) mainly on the ground that, refund claim not filed within time as per section 11B of the Central Excise Act 1944.
- 4.3 It ought to have considered that, goods have been exported on payment of duty therefore, appellants have fulfilled the primary requirement and there is no such allegation that goods have not

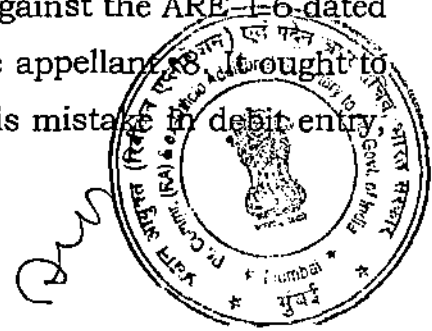


been exported. In respect of submission of rebate claim beyond time, in this regards, appellant rely on the Judgment delivered by Hon'ble Bombay High Court in the case M/s Uttam Steel Ltd. Vs. Union of India reported in E.L.T. 2003 (158) E.L.T. 274 (Born). Thereby Hon'ble Bombay High Court has held that, neither Rule 12 nor section 11B contemplates that if the application for rebate of duty has not made within the period of limitation, the accrued right to rebate of duty lapses.

4.4 When the Judgment delivered by the Hon'ble High Court and Para-31 & 41 are squarely applicable to present case and the Commissioner (Appeal) has held that it is not applicable to present case, is it not injustice with the appellant? Therefore, appellant is rightly entitled of rebate claim filed. The adjudicating authority holding that the said Judgment is not applicable to present case is not sustainable.

4.5 Further, the adjudicating authority should not have brushed aside the said Judgment of the Honble Bombay High Court much less of any other High Court taking contrary view. Appellant submit that the law on the subject is absolutely clear; wherein various High Courts and Apex Court have ruled from time to time that the Appellant authority are bound by the Judgment of the High Court in absence of any contrary judgment of the Jurisdictional High Court. Therefore, the above said judgment is rightly applicable to present case.

4.6 It ought to have considered that, rebate claim, against the ARE-1 No. 6 dated 25/06/2009, not barred by limitation. The goods against the said ARE- 1 no.6 have been exported on 07/07/2009, and appellant has filed rebate claim within one year from the date of shipment on dated 30/06/2010, which is within time. Therefore, rejection of the rebate claim against the ARE-1-6 dated 25/06/2009 would be injustice with the appellant. It ought to have considered that, though the there is mistake in debit entry



however, no such allegation that, appellant has not debited or paid the duty. Appellant has filed ER-1 return shown the goods exported under rebate, debited the duty of the same as per Rule 8 of Central Excise Rule 2001. It has admitted fact that goods had been exported. Therefore, denying the rebate claim on technical ground is not sustainable, hence, rebate claim may please be allowed by setting aside the impugned OIA.

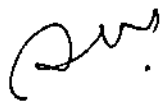
4.7 The delay has taken place due to non-receipt of document in time from customs house agent, appellant under bonafied belief that, no rebate claim should be filed unless and until receipt of all documents which is required for rebate claim. Hence, delay had taken place in filing of rebate claim.

4.8 In present appeal is concerned delay has been taken due to non-aware of the procedure how and where is to file, hence, delay may please be condoned.

4.9 Further, it is not economical for applicant to appoint advocate in this matter considering the amount involved, being a small-scale unit and appellant is factory / residing in Aurangabad, Maharashtra, hence, appellant do not want to heard in person, therefore, appeal may please be decided on the basis of merit available on record.

5. A Personal hearing was held in this case on 18.12.2017 and Shri R.S. Indani, Advocate duly authorized by the applicant, appeared for hearing and reiterated the submission filed through Revision Application and filed further submissions dated 18.12.2017. In view of the same he pleaded that RA may be allowed and Order in Appeal be set aside.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.



7. Government observes that there is a delay of 442 days in filing the present Application by the applicant. From the Application filed by the applicant it is observed that, the impugned Order in Appeal was received by the applicant on 20.02.2011, however the Revision Application was filed before the Revisionary Authority only on 06.08.2012. Thus, there was a delay of 442 days in filing of this application. Further, at para 8 of the Revision Application, the applicant has stated that *"being small scale unit not aware about the procedure how the appeal is to be filed and whom it is to be filed, hence delay has been taken place in filing of appeal which may please be condoned"*.

8. The relevant Section of the Central Excise Act, 1944 is reproduced below for understanding the relevant legal provision:

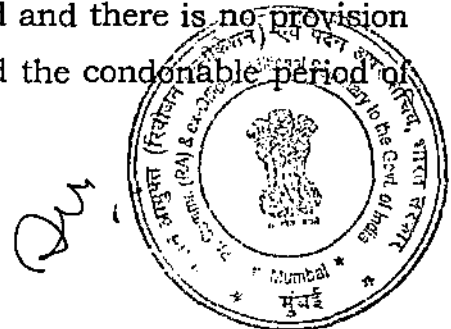
*"Section 35EE. Revision by Central Government. - (1) The Central Government may, on the application of any person aggrieved by any order passed under Section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of Section 35B, annul or modify such order :*

.....  
.....  
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*(2) An application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made :*

*Provided that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."*

From above, it is clear that the applicant was required to file revision application within 3 months. The delay upto 3 months can be condoned. Since the revision application is filed after the condonation period of three months, the same has become clearly time barred and there is no provision under Section 35EE to condone the delay beyond the condonable period of three months.



9. Government further notes that the preamble to impugned order in Appeal (page 22, Exhibit E to Revision Application) has categorically mentioned the Authority along with postal address, before whom the Appeal under the provisions of 35EE of Central Excise Act, 1944 would lie, and other details such as Form, Limitation, Fee, Mode of Filing etc. The applicant merely states that he was not aware of the procedure how and where to file appeal is not an excuse especially when the preamble to impugned Order in Appeal stated everything about the filing of appeal. The delay of 442 days is enormous and the explanation offered by the applicant is not worth to condone the delay.

10. In this regard Government observes that In CCE Patna Vs Tisco Jamshedpur, [1987 (30) E.L.T. 1017 (Tribunal)] while rejecting the application filed by the department for condonation of delay of 385 days in filing of appeal, the Hon'ble Tribunal observed that


*"The inordinate and long delay in the case shows that there is no sufficient cause to condone the delay. The application for condonation of delay is rejected. Consequently, the appeal also stands rejected".*

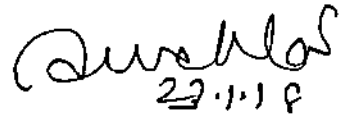
Civil Appeal No. 3237 of 1989 filed by the Collector of Central Excise Patana against above Order passed by the CEGAT, New Delhi was also dismissed by the Hon'ble Supreme Court Bench on 06.04.1995.

11. In the light of the aforesaid discussion, Government rejects the Revision Application being time-barred.

12. So, ordered.

**True Copy Attested**

  
31-1-18  
एस. आर. हिरुलकर  
S. R. HIRULKAR  
(A-C)

  
23.01.18  
(ASHOK KUMAR MEHTA)  
Principal Commissioner & ex-Officio  
Additional Secretary to Government of India

ORDER No. 05/2018-CX (WZ) /ASRA/Mumbai DATED 23.01.2018



To,  
M/s. Sangameshwar Precision Works Pvt. Ltd.,  
Plot No. M/105/10, MIDC, Walunj, Aurangabad, Div-II  
Aurangabad - 431136.

Copy to:

1. The Commissioner of GST & CX, Aurangabad Commissionerate, Town Centre, N-5, Cidco, Aurangabad - 431003.
2. The Commissioner of GST & CX, (Appeals) Aurangabad, Town Centre, N-5, Cidco, Aurangabad - 431003.
3. The Assistant/Deputy Commissioner of GST & CX, Aurangabad Commissionerate, Town Centre, N-5, Cidco, Aurangabad - 431003.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

