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F.NO. 195/422/11-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.....27/13.....

ORDER NO. 104 /2013-CX DATED 05-02-2013 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 ORDER-IN-APPEAL No. SB (21) 21/MV/2010 dated 18.01.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I, Mumbai.

APPLICANT : M/s Shree Mahavir Textile Mills Unit, Goregaon (E) Mumbai

RESPONDENT : The Commissioner of Central Excise, Mumbai-V

ORDER

This revision application is filed by M/s Shree Mahavir Textile Mills Unit, 204-206, Kamala Bhawan Sharma Industrial Estate, Goregaon (E) Mumbai against the order-in-appeal No. SB (21) 21/MV/2010 dated 18.01.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I, Mumbai.

2. Brief facts of the case are that applicant exported excisable goods and filed eight rebate claims in respect of exported goods pertaining to 8 ARE-I form. The rebate claim for all ARE-1s were filed by the applicant to the office of Assistant Commissioner of Central Excise, Goregaon Division vide his letter dated 10.10.2008. The applicant has referred to CESTAT Order No.A/623/08/C-IIEB (Misc. Order No. M I 1143/08C-11/EB dated 29.07.2008, wherein Hon'ble CESTAT has disposed of department appeal. Therefore the Commissioner of Central Excise (Appeals) Order No. – BR (612) 70 MV-2006 dated 31.03.2006 will be held good and accordingly the applicant are eligible for the rebate claim filed by them for the export of excisable goods that took place during the period from June 2006 to December 2006. They further requested to settle claim with interest as per Section 11B of Central Excise Act. They further submitted that the rebate claim were unduly delayed for no fault on their side and requested to settle the same with interest without any further delay. They further submitted that the matter was pending with CESTAT Mumbai and they have not filed rebate claims of Rs.4,55,377/-. In reply to applicant's above request, the Assistant Commissioner Central Excise Goregaon Division vide his letter dated 24.10.2008, informed the applicant that the said claim of Rs.4,55,377/- does not merit sanction as it is time barred. The said rebate claim was filed on 16.10.2008 for the goods cleared from the factory in July, August, September, October and December 2006. To this, the applicant vide letter dated 15.01.2009, argued that there is an amendment to the proviso to sub section (1) of Section 27 of the Customs Act, 1962 by which they were eligible to claim the said rebate claims. The applicant again vide letter dated 03.03.2009 requested to re-examine the issue. The Department continued with its earlier stand on the issue.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who after consideration of all the submissions, rejected the appeal.

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 This revision application is on account of an appeal passed by the Tribunal. The Appellant Company had taken CENVAT Credit of Rs.3299998.00 as per the provisions of the Central Excise Act and Rule as prevailing on April 2003. The appellant company began to utilize this Cenvat Credit for export clearances from 23.08.2004. They had filed rebate claims to the tune of Rs.17,12,096/- with the jurisdictional Assistant Commissioner. Instead of passing the claims Additional Commissioner Mumbai-V under his order-in-original No.317/01/V/2005/Addl./DK dated 01.09.2005 had ordered reversal of the entire Cenvat Credit. The order was set aside by Commissioner (Appeals), Zone-I, vide his order No. BR(612) 70/MV/2006 dated 31.03.06. The department had gone in for appeal before the Appellate Tribunal. The Department had also obtained a stay against the appeal from the Tribunal under Order No. S/1750/WZB/06-C.I(EB) dated 20.11.2006. The appeal of the Department was rejected by the Tribunal under its Order No.A/623/08/C-IIFEB(Misc. Order No. M I 1143/08C-11/EB dated 29.07.08. On receipt of order from CESTAT Mumbai the appellant company had filed rebate claims of Rs.4,55,377/- as per details given below to the jurisdictional Assistant Commissioner on 10.10.2008.

4.2 The rebate claim pertains to goods cleared in July, August, September, October, & December 2006. The delay in submission of rebate claim is due to the provision incorporated in the budget of 2006-07 to the effect "in case where the duty becomes refundable as a consequence of a judgment, decree, order or a direction of appellate authority, appellate tribunal or any court, the date of such judgment, decree, order or direction will be the relevant date". Moreover the company could not file the rebate

claims on the order-in-appeal as the department had obtained a stay from the Tribunal. The last date for filing of the rebate claims were 10.07.2007 i.e. one year from the date of shipment. Before that clause (ec) to Section 11B of Central Excise Act was introduced on 11.05.07. Therefore even if the Appellant Company had filed the rebate claims he was not eligible to receive interest on his claim.

4.3 The order-in-appeal from the Commissioner is dated 31.03.2006 whereas the ARE-1 are dated 13.06.06 (shipment date 11.07.06) and therefore the last date for filing is 10.07.08. The applicant could not file the rebate claim within this date because of the insertion of clause (ec) to Section 11B on 11.05.07 and the stay obtained by the department on 2.11.2006 which was vacated only by the final order of the Tribunal dated 29.07.08. The rebate claims were filed within 3 months from the date of CESTAT order on 29.07.08 and therefore they are not time barred.

5. Personal hearing scheduled in this case on 21.12.12 was attended by Shri M.K. Hari Kumar, Export Manager on behalf of the applicant who reiterated the grounds of revision application. Shri D.N. Paunikar, Superintendent Central Excise, Goregaon Division appeared for hearing on behalf of respondent department.

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

7. In this case goods were exported on 11.07.2006 whereas rebate claim of Rs.4,55,377/- was filed on 16.10.2008 as stated by applicant in his revision application. The said rebate claim is rejected as time barred. Applicant has pleaded in this revision application that the delay in filing rebate claim has occurred as department had filed appeal against order-in-appeal dated 31.03.2006 before CESTAT. In the said order, Commissioner (Appeals) had held that Cenvat Credit availed as admissible. The department appeal was rejected by Tribunal on 29.07.08 and thereafter they filed rebate claim within 3 months. Applicant claimed that rebate claims filed within 3 months of CESTAT order cannot be held time barred.

8. In this case, rebate claim was filed on 10.10.2008 for the duty paid on goods exported from July, 2006 to December 2006. This factual position is not disputed by the applicant. Government notes that as per explanation (a) to section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of section 11B of Central Excise Act, 1944. The explanation A of section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim means:-

"(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods.-

(i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are load, leaves India, or"

There is no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims. In view of above position the argument of applicant that he was required to file rebate claim within 3 months of CESTAT order as per clause (e c) of section 11B is not tenable.

9. Applicant has given various reasons for filing rebate claim after a stipulated period of one year. In addition, he contended that delay in filing rebate claim is a procedural lapse and same may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement which is mandatory to be followed. The statutory requirement can be condoned only if there is such provisions under Section 11B. Since there is no provision for condonation of delay in terms of Section 11B, the rebate claim has to be treated as time barred. Applicant has wrongly placed reliance on provisions of clause (e c) of section 11B, which are not applicable in this case in view of position discussed above.

10. Government notes that if rebate claims filed after one year being time barred cannot be sanctioned as categorically in the case laws/judgments cited below :-

10.1 Hon'ble High Court of Gujrat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) has held as under:-

"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :

"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the

question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000 ?”

10.2 The Hon’ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held as under:

“Tribunal, acting under provisions of Central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B ibid – under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B ibid and Section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims – Section 11B of Central Excise Act, 1944 – Rule 12 of erstwhile Central excise Act, 1944 – Rule 18 of the Central Excise Rules, 2002. – Contextually, in the case of Uttam Steel Ltd. also, the Hon’ble Bombay High Court allowed a belated rebate claim in a writ petition filed by the assessee. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B.”

10.3 Further, it has been held by the Hon’ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

10.4 Hon’ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

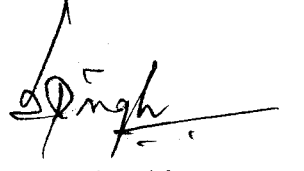
10.5 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed a WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central Excise Act 1944. Hon'ble High Court has observed in para 11 & 12 of its judgement as under:-

"11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central Excise. Reliance has been placed in the reply upon Paragraph 8.3 of the C.B.E. & C. Manual to which a reference has been made above, and on a Trade Notice dated 1 June 2004 which is issued by the Commissioner of Central Excise and Customs Paragraph 8.3 of the Manual makes it abundantly clear that what is required to be filed for the sanctioning of a rebate claim is, inter alia, a self-attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise rules, 2002 there are two types of rebates: (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on material used in the manufacture or processing of such goods. The first kind of rebate is governed by Notification No., 19/2004 dated 6 September 2004. In the case of the rebate on duty paid on excisable goods, one of the documents required is a self-attested copy of the shipping bill. For the second kind of rebate a self-attested copy of the export promotion copy of the shipping bill is required. Counsel appearing on behalf of the petitioner sought to rely upon a Notification issued by the Central Board of Excise and Customs on 1 May 2000. However, it is abundantly clear that this Notification predates the Manual which has been issued by the Central Board of Excise and Customs. The requirement of the Manual is that it is only a self-attested copy of the shipping bill that is required to be filed together with the claim for rebate on duty paid on excisable goods exported.

12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."

12. In view of above position, the rebate claim filed after stipulated time limit of one year being time barred in terms of section 11B of Central Excise Act, 1944 is rightly rejected by the Commissioner (Appeals). Therefore, Government upholds the impugned Order-in-Appeal.

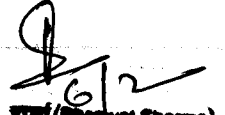
13. The revision application is rejected in terms of above.
14. So, ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Shree Mahavir Textile Mills Unit,
204-206, Kamala Bhawan Sharma Industrial Estate,
Goregaon (E) Mumbai

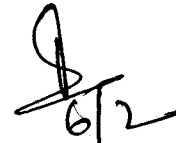


(भगवती शर्मा/Bhagwati Sharma)
सहायक आयोग/Assistant Commissioner
G.E.C.-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
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नई दिल्ली / New Delhi

G.O.I. Order No. 104/2013-Cx dated 05.02.2013

Copy to:

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