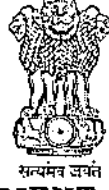


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

**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. 198/137/16-RA

6496

Date of Issue: 12-11-2022

ORDER NO. 1060/2021-CX (WZ) /ASRA/Mumbai DATED 11.11.2022 OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Pr. Commissioner of CGST & Central Excise, Pune - I.

Respondent : M/s Sandvik Asia P. Limited,  
Mumbai-Pune Road, Dapoli,  
Pune - 411 012.

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No.PUN-EXCUS-001-APP-281-15-16 dated 26.02.2016 passed by Commissioner (Appeals -I), Central Excise, Pune.

**ORDER**

The subject Revision Application has been filed by the Pr. Commissioner of CGST & Central Excise, Pune - I (here-in-after referred to as 'the applicant/Department') against the Order-in-Appeal dated 26.02.2016 passed by the Commissioner (Appeals -I), Central Excise, Pune. The said Order-in-Appeal disposed of an appeal by M/s Sandvik Asia P. Limited (here-in-after referred to as 'the respondent') against Order-in-Original dated 17.09.2014 passed by the Assistant Commissioner, Central Excise, Division - Pune IV, Pune - I Commissionerate.

2. Brief facts of the case are that the applicant filed a rebate claim on 30.11.2012 for the duty paid on the goods exported by them vide ARE-1 No.671 dated 21.09.2012, under Rule 18 of the Central Excise Rules, 2002 and notification no.19/2004-CE(NT) dated 06.09.2004. During scrutiny, it was noticed that the container number on the Airway Bill did not match with that on the Shipping Bill and also that the DBK declaration was not submitted. On being communicated of these deficiencies the respondent withdrew their claim vide letter dated 20.02.2013. Thereafter, the respondent re-submitted the said claim on 05.06.2014 after carrying out the necessary amendment. A Show Cause Notice was issued to the respondent seeking to reject the said claim on the grounds of it being time barred as the same was filed after one year from the date of export. The original authority held that the date of re-submission of the claim would be the 'relevant date' for computing the period of one year prescribed by Section 11B of the Central Excise Act, 1944 and proceeded to reject the claim as he found that the claim was time barred as the Let Export Order in respect of the consignment was given on 22.09.2012 and the claim for the same filed on 05.06.2014. Aggrieved, the respondent filed appeal before the Commissioner (Appeals) who found that the re-submission of the claim should be considered as a continuation of the original application and not a fresh claim and remanded the same back to the original authority for being decided afresh after verification of the genuineness of the documents submitted by the respondent.

3. Aggrieved, the applicant/Department has filed the subject Revision Application on the following grounds:-

- (a) The Commissioner (Appeals) had incorrectly held that re-submission of the claim should be considered as a continuation to the original application was incorrect;
- (b) The original claim filed on 30.11.2012 was withdrawn by the respondent on 20.02.2013 for the purpose of amendment and hence the claim filed by them on 05.06.2014 has to be treated as a fresh claim;
- (c) Section 11B of the Central Excise Act, 1944 requires that a rebate claim should be filed within a period of one year from the date of export and hence the claim filed on 05.06.2014 was time barred;
- (d) Reliance was placed on the decision of the Revisionary Authority in the case of Jain Grani Marmo P. Ltd vs GOI [2014 (314) ELT 936 (GOI)] in support of their case.

In view of the above, it was requested that the impugned Order-in-Appeal be set aside and the Order-in-Original dated 17.09.2014, rejecting the rebate claim, be restored.

4. Personal hearing in the matter was held on 18.10.2022. Shri P. Parthy, A.C., appeared on behalf of the Department and reiterated the submissions already made. Shri Shripad Deshkulkarni, Sr. Manager, of the respondent firm appeared online on behalf of the respondent and submitted that the original claim was filed in time and the same was withdrawn to be submitted along with additional documents.

5. Government has carefully gone through the relevant case records, the written and oral submissions and also perused the impugned Order-in-Original and the Order-in-Appeal.

6. Government notes that the issue involved is whether the rebate claim filed by the respondent would be hit by the limitation of time prescribed by

Section 11B of the Central Excise Act, 1944. Government finds that the chronology of events of the instant case is as follows:-

- 'Let Export Order' in respect of the consignment in question was given on 22.09.2012;
- Respondent filed rebate claim on 30.11.2012;
- On discrepancies being pointed out, the respondent withdrew the claim on 20.02.2013;
- Respondent re-submitted the claim with the amended documents on 05.06.2014.

Government finds that the above dates are not in dispute. Government notes that the original authority held the date of re-submission of the claim as the date of filing the claim for computing the period one year while rejecting the said claim. Whereas, the Commissioner (Appeals), while remanding the case to the original authority, held that re-submission of the claim should be considered as a continuation of the original application and not a fresh claim, thus holding the date the respondent submitted the claim for the first time, as the date on which the claim was filed.

7. Government notes that the original claim filed by the respondent on 30.11.2012 was admittedly withdrawn by them on 20.02.2013 for the purpose of rectifying the discrepancies pointed out. Government also notes that the impugned Order-in-Original dated 17.09.2014 records that the respondent re-submitted the claim on 05.06.2014 after "*rectification/amendment on Air Bill and Shipping Bill*". In this context, Government notes that if the delay in re-submission of the claim was due to the delay in receiving, the amended copy of the Shipping Bill or any other document necessary for filing the claim, from the Customs Department, then such delay would be attributable to the Department and such period should not be taken into account while computing the limitation period of one year. However, if the delay in re-submission of the claim was not due to any delay by the Customs/Excise Authorities in providing the respondent with the requisite Shipping Bill or any other document necessary for claiming such rebate, the date of re-submission of the claim i.e. 05.06.2014 should be treated as the date of filing the claim, in which case the claim is clearly time barred in terms of Section 11B of the Central Excise Act, 1944. Government finds that it was the respondent themselves who withdrew the

claim after having filed it for the first time. Having withdrawn the claims, they cannot claim that the date of earlier submission would still hold good for computing the period of limitation. Government finds that the decision of the Commissioner (Appeals), to treat the re-submission of the claims at a date much later than the due date prescribed by the law, as a continuation of the original application and not a fresh claim, without verifying the cause for delay, to be improper and accordingly holds so.

8. In view of the above, Government sets aside the impugned Order-in-Appeal and remands the case back to the original authority for verifying the cause for delay and in case such delay is attributable to the Department, the date of receipt of the rectified/amended document from the Department should be treated as the 'relevant date' for computing the time limit prescribed in Section 11B of the Central Excise Act, 1944. If such delay is not attributable to the Department, the rebate claim in question should be held as time barred. The original authority will provide sufficient opportunity to the respondent to make submissions in support of their case.

9. The Revision Application is disposed of in the above terms.

  
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India

ORDER No. 1060/2022-CX (WZ) /ASRA/Mumbai dated 11.11.2022

To,

The Principal Commissioner CGST & Central Excise,  
Pune - I Commissionerate,  
41/A, ICE House, Opp. Wadia College,  
Sasoon Road, Pune - 411 001.

Copy to:

1. M/s Sandvik Asia P. Limited, Mumbai - Pune Road, Dapoli,  
Pune - 411 012.
2. The Commissioner (Appeals-I), Central Excise, Pune, 3<sup>rd</sup> floor, 'F' Wing,  
ICE House, 41-A, Sasoon Road, Pune - 411 001.
3. Sr. P.S. to AS (RA), Mumbai
4. Notice Board.