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F.NO. 195/33 & 99 to 102/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Date of Issue..8/2/13

ORDER NO. 108-112 /2013-CX DATED 07-02-2013 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.

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| SUBJECT | : | REVISION APPLICATION FILED UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944 AGAINST THE ORDER-IN-APPEAL No. SKSS/231-235/Vapi/10 dated 12.10.2010 passed by Commissioner of Central Excise (Appeals) Vapi |
| APPLICANT | : | M/s Lalitha Chem Industries Pvt. Ltd., Silvassa |
| RESPONDENT | : | The Commissioner of Central Excise, Vapi |

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## ORDER

These revision applications are filed by M/s Lalitha Chem Industries Pvt. Ltd., Unit-II, Silvassa against the order-in-appeal No. SKSS/231-235/Vapi/10 dated 12.10.2010 passed by Commissioner of Central Excise (Appeals) Vapi.

2. Brief facts of the case are that applicant cleared goods for export on payment of duty under rebate claim in terms of Rule 18 of Central Excise Rules 2002. The rebate claims filed by applicant after stipulated time period of one year were rejected as time barred.

3. Being aggrieved by the said orders-in-appeal, applicant filed appeal before Commissioner (Appeals) who rejected the same.

4. Being aggrieved by the impugned order-in-appeal, the applicant has filed the revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following common grounds :-

4.1 The Commissioner (Appeals) issued order-in-appeal and held that the ratio of judgment of Hon'ble Bombay High Court in the case of Uttam Steel Ltd. was an entirely different context viz. applicability of time limit for filing refund after amendment of Section 11B where the time limit was increased from 6 months to one year. In this context, the Hon'ble High Court of Bombay held that requirement of Section 11B, so far time limit is concerned, is procedural and hence applicable retrospectively.

4.2 The applicants submits that to allow the rebate claim the primary condition is that the excisable goods have been exported. In the present case there is no dispute on the facts that the goods have been exported. The show cause notice also admit that the goods have been exported. Once the excisable goods have been exported the right to get the rebate of duty arises to the exporter. The provision stated under section 11B of the Central Excise Act, 1944 are only procedural in nature. Neither rules nor section

11B contemplates that if the rebate claim is not filed within the period of one year right accrued to the exporter lapses. It is substantive right of the exporter and substantive law does not barred by the procedural lapses. The company relies upon the judgment of Uttam Steel vs. UOI reported in 2003 (158) ELT 274 (Bom.).

4.3 It is submitted that the Rule 18 of the Central Excise Rules, 2004 relates to rebate of duty. The said Rule states that the Central Government may issue notification for grant of rebate for duty paid on the finished goods. The Notification No. 19/2004-CE(NT) was issued under Rule 18 for grant of rebate. The said notification in the first para states that the rebate shall be granted of the whole of the duty paid on all excisable goods falling under the First Schedule of the Central Excise Tariff Act 1985 (5 of 1986) exported to any country other than Nepal and Bhutan, subject to the condition, limitation and procedures specified hereinafter. The above said notification nor Rule 18 states that Section 11B will be applicable for limitation for granting the rebate claim.

From the above, it is submitted that the Rule 18 nor the Notification issued under Rule 18 specify the time limit for filing the rebate claim.

4.4 Further, it is submitted that Hon'ble Tribunal in various judgments has held that when the goods were actually exported and goods have been cleared from factory on payment of duty, the rebate should be granted, even if the procedural lapse is observed. We rely on the following judgments:

(i) Alpha Garments vs. Commissioner, Central Excise, New Delhi, 1996 (86) ELT 600 (Trib)

(ii) Birla VXL Limited, 1998 (99) ELT 387 (Trib).

In the present case, there is not dispute that the goods were actually exported and the goods were cleared on payment of duty. Hence, the rebate claim should be granted by condoning the procedural lapses.

5. Personal hearing was scheduled in this case on 8.8.2012, 21.12.2012 and 29.01.2013. Nobody attended hearing on these dates. Applicant vide letter dated 22.01.2013 requested to decide the case on merit without any hearing.

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

7. On perusal of records, Government observes that applicant exported the goods on payment of duty under rebate claim under rule 18 of Central Excise Rules 2002. On scrutiny of rebate claims filed by applicant, it was observed that goods in respect of ARE-1 No. 231/08-09 dated 30.08.08, 306/08-09 dated 15.10.08, 305/08-09 dated 15.10.08, 228/08-09 dated 29.08.08 and 229/08-09 dated 29.08.08 were shipped on board on 2.9.08, 18.10.08, 18.10.08, 2.9.08 and 2.9.08 respectively. Applicant filed all the five rebate claims on 10.12.2009 after expiry of prescribed time limit of one year as laid down in section 11B of Central Excise Act 1944. Applicant has contended in his revision application that as per rule 18 of Central Excise Rules 2002 and Notification No. 19/04-CE(NT) dated 6.9.2004, there is no time limit for filing rebate claim that the requirement of filing rebate claim is procedural in nature and for procedural lapses which are condonable, substantial benefit of rebate cannot be denied.

8. 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.

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.

10. Government notes that rebate claims filed after one year being time barred cannot be sanctioned as categorically held 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 clam 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 din 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."*

11. 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.

12. The revision applications are thus rejected in terms of above.

13. So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

M/s Lalitha Chem Industries Pvt. Ltd.,
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Attested
8/12
(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 Rev.)
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

G.O.I. Order No.108-112/2013-Cx dated 07.02.2013

Copy to:

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2. The Commissioner of Central Excise & Customs (Appeals), 4th Floor, Adarshdham Building, Opp. Old Town, Police Station, Daman Road, Vapi, Police Distt. Valsad, Gujarat – 396 191
3. The Assistnat Commissioner, Central Excise & Customs, Division-II, Silvassa, Ground Floor, Sahkar Bhawan, Opp. Piparia Garden, Piparia, Silvassa.
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

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