

REGISTERED
SPEED POST



F.No.195/1226-1227/2011-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...23/8/13

ORDER NO. 1083-1084/13-Cx DATED 20-8-2013 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. P-III/RS/243-244/11 dated 18.08.2011 passed
by Commissioner of Central Excise (Appeals) Pune-
III.

APPLICANT : M/s Chheda Electricals and Electronics Pvt. Ltd.,
Pune

RESPONDENT : Commissioner of Central Excise, Pune-III
Commissionerate

ORDER

This revision application is filed by M/s Chheda Electricals and Electronics Pvt. Ltd., Pune against the orders-in-appeal No. P-III/RS/243-244/11 dated 18.08.2011 passed by Commissioner of Central Excise (Appeals) Pune-III.

2. Brief facts of the case are that the applicant is engaged in the manufacture of excisable goods viz. Regulator, Generator (Dynamo) Assembly. Applicant exported said goods on payment of excise duty and filed rebate claim on 07.02.2011 for Rs. 4,59,339/- wherein the adjudicating authority sanctioned after restricting the claim to an amount of Rs. 2,70,489/- in cash and an amount of Rs. 399/- in Cenvat Credit account and rejected the balance amount of Rs. 1,88,451/- on the ground of time bar as per Section 11B of Central Excise Act, 1944. Applicant filed another rebate claim on 18.02.2011 for Rs. 3,62,586/- and the adjudicating authority rejected the entire claim on the ground of time bar as per Section 11B of the CEA, 1944. Details of exports are given as under :-

Month	ARE-1 No. & Date	Shipping Bill No. & Date	FOB Value in Rs.	Let Export Date	Cenvat Debit Entry No. & Date	Amount of Rebate Claimed	Date of filing Rebate Claim
Appeal No.169 of 2011							
Nov. 2009	No.9 dated 27.11.09	7896016 27.11.2009	2093911/-	30.11.2009	1140 to 1142 dt. 27.11.2009	172797	18.02.2011
Dec. 2009	No.10 dated 18.12.2009	7964089 19.12.2009	2300059/-	21.12.2009	1232 to 1234 dt. 18.12.2009	189789	18.02.2011
					Total	362586	
Appeal No. 107 of 2011							
Jan 2010	No.11 dated 16.01.2010	8056171 16.01.2010	2250443/-	18.01.2010	1559 to 1561 dt. 31.01.2010	188451	07.02.2011

Adjudicating authority rejected the said rebate claims as time barred in terms of section 11B of CEA 1944 read with Rule 18 of CER 2002.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal and upheld the impugned orders-in-original.

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 The applicants submits that the rebate claim has been filed for the exports effected for the period November 2009 and December 2009 and January 2010. The applicants in the past exported the final product against UT 1 under Rule 19 of the Central Excise Rules 2002. The applicants has opted for export of goods on payment of duty under Rule 18 of the Central Excise Rules, 2002 as there was huge accumulation of the cenvat credit balance in cenvat credit account. The applicant has exported final product on payment of excise duty and delay was purely on account of sudden resignation of the employee who was looking after day to day excise and customs activities of the organization. Till the time applicant appoints the person to take over the excise and customs job, the time limit of one year got lapsed and applicant could not submit the rebate claim within a period within stipulated time limit of one year.

4.2 The applicants has debited the excise duty in their cenvat credit account at (1) Debit Entry No. 1140 dated 27.11.09 (2) Debit Entry No. 1141 dated 27.11.09 (3) Debit Entry No.1142 dated 27.11.09 (4) Debit Entry No. 1395 dated 16.01.10 (5) Debit Entry No. 1396 dated 16.01.10 (6) Debit Entry No. 1397 dated 16.01.10 towards physical exports and as per Section 11B may not be eligible for sanction of the rebate claim by way of cheque, but the part claim amount can be sanctioned by way of credit in the cenvat credit account.

4.3 The applicants submits that the sanction of the part claim amount in cenvat credit account is revenue neutral as there is no revenue loss to the exchequer. In fact the applicant state the rebate of excise duty is not an incentive to the manufacturer

exporter but is the refund of the excise duty debited from the Cenvat Credit Account and hence same can be allowed in Cenvat Credit Register if not by way of cash refund.

4.4 The applicants submit that there is no time limit for availment of cenvat credit for inputs and capital goods under Cenvat Credit Rules, the same logic can also be applied as the proof of exports has been submitted alongwith rebate claim and the same has been duly scrutinized by the jurisdictional Range Superintendent of Central Excise.

4.5 The applicants submits that rebate of duties suffered by the manufacturer with respect to physical exports is an integrated scheme to promote exports. Further provisions of Section 11B of the Act stipulate that a claim has to be accompanied by requisite documents which have been duly fulfilled by the exporter. The applicants further state that delay cannot be put to disadvantage on the grounds of limitation when the documentary evidence of physical exports and debit of the excise duties has been made by the manufacturer. The applicants submit that the procedural infraction of Notification / Circulars /etc. are to be condoned if exports have really taken place, and hence substantive benefit cannot be denied for procedural lapses.

5. Personal hearing scheduled in this case on 08.08.13 at Mumbai was not attended by anybody on behalf of the applicant.

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

7. These rebate claims were filed after the lapse of time limit of one year as stipulated under Section 11B of CEA 1944 as is evident from following details :

S.No.	ARE-1 No. & Date	Amount of Rebate Claim Rs.	Let Export Order Date	Date of Filing Rebate Claim
1	No.9 dated 27.11.09	172797	30.11.2009	18.02.2011
2	No.10 dated 18.12.2009	189789	21.12.2009	18.02.2011
	Total	362582		
3	No.11 dated 16.01.2010	188451	18.01.2010	07.02.2011

These factual details are admitted by the applicants which clearly reveal that rebate claims were filed after one year. But applicant has contended that export of duty paid goods is not in dispute and these rebate claims may be allowed by condoning the delay.

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 11B, 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."

11. In view of above position, the rebate claim filed after one year's time limit stipulated under Section 11B of CEA 1944 read with Rule 18 of CEAR 2002 is clearly hit by time limitation clause and cannot be entertained at all. As such it is rightly rejected

and Government do not find any infirmity in the impugned order-in-appeal upholding the rejection of said claim as time barred.

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

13. So ordered.




(D.P. Singh)

Joint Secretary (Revision Application)

M/s Chheda Electricals and Electronics Pvt. Ltd.,
Gurudeo Industrial Estate,
A4 to A6 Gat No. 109/1, Tal. Mulshi, Pirangut
Pune - 412 042

Attested




(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए./Superintendent
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Ministry of Finance, (Deptt. of Re-
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

Order No. 1123-10⁸⁴/13-Cx dated 20.9.2013

Copy to:

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2. Commissioner of Central Excise (Appeals) Pune-III, F-Wing, 3rd Floor, ICE House, 41, Sassoon Road, Pune – 411 001
3. The Assistant Commissioner of Central Excise, Pune-IV Division, Pune-III Commissionerate, IEC House, Pune – 411 001.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy


(T. R. ARYA)
Suf~~ab~~(Revision Application)