

REGISTERED

SPEED POST



F.NO. 198/144/11-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.....

ORDER NO. **113 /2013-CX** DATED **08.02.2013** 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.M-I/AV/368/2010 dated 26.11.2010 passed by
Commissioner of Central Excise (Appeals) Mumbai Zone-I,
Mumbai

APPLICANT : The Commissioner of Central Excise, Thane-II

RESPONDENT : M/s Alok Enterprises, Thane

ORDER

This revision application is filed by CCE, Thane-II, Navprabhat Chambers, Ranade Road, Dadar (W) Mumbai against the order-in-appeal No.M-I/AV/368/2010 dated 26.11.2010 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-I, Mumbai with respect to order-in-original No. 1017 to 1020-R/06-07 date 29.09.2006 passed by ACCE Boisar-II Division Thane-II.

2. Brief facts of the case are that M/s Alok Enterprises filed 4 rebate claims for Rs.2,00,903/- on 15.05.2006 under Rule 18 of the Central Excise Rules, 2002 for excise duty paid on excisable goods exported by them. On scrutiny of the documents submitted for claiming the rebate, it was observed that assessee had filed the claims on 15.05.2006 for the goods exported under various ARE-1's on 27.01.2005, 20.02.2005, 5.3.2005, 26.3.2005 and 10.4.2005 i.e. after expiry of stipulated time of one year. Therefore show cause notices were issued to the assessee for rejection of following rebate claims

S.No.	ARE No.	Date of Export	Date on which original claim filed	Date on which corrected claim filed	Duty	SCN issued on
1	1/5.4.05	10.4.05	Not filed	15.05.06	28827	11.8.2006
2.	31/21.3.05	26.3.05	Not filed	15.05.06	31073	11.8.2006
3	28/17.2.05 29/2.3.05 30/2.3.05	20.2.05 5.3.05 5.3.05	25.4.05	15.5.06	86482	25.8.2006
4.	26/20.1.05 27/20.1.05	27.1.05 27.1.05	7.3.05	15.5.06	54521	25.8.2006

2.1 The Assistant Commissioner, Central Excise, Boisar-II Division, Thane-II vide order-in-original NO. 1017 to 1020-R/06-07 dated 29.09.2006 issued under F.No. V/(Ch.28) 18-R-267/Bsr-II/2006 rejected the rebate claims.

3. Aggrieved by the above said order party filed an appeal before Commissioner (Appeals) who set aside the impugned orders-in-original and remanded the cases to original authority to consider the rebate claims having been filed in time and decide accordingly.

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

4.1 The department does not agree with the order-in-appeal that all the rebate claims were filed earlier in the month of April, 2005 and remanded back to the adjudicating authority to consider the rebate claim as having been filed in time and decide the same. The fact is that because of the claims had been filed on 15.5.2006 for the goods exported under various ARE-1's on 27.1.2005, 20.2.2005, 5.3.2005, 26.3.2005 and 10.4.2005 i.e. after expiry of stipulated time of one year, the rebate claims were rejected.

4.2 The department does not agree with the order-in-appeal that all the rebate claims filed were in time i.e. in the month of April, 2005. The fact is that

- (i) in respect of ARE-1 Nos. 26,27,28,29,30 the rebate claims were filed earlier on 7.3.05 and 25.4.05 which were returned to assessee on 6.5.2005 and 19.7.2005 and were resubmitted on 15.5.2006 after due correction.
- (ii) in respect of ARE-1 Nos. 31 and 01 the rebate claims were not filed at all and the said claims were filed firstly only on 15.5.2006.

4.3 In view of these facts, it appears that the Commissioner (Appeals) has erred in setting aside the order-in-original NO. 1017 to 1020-R/06-07 and therefore the decision of setting aside the order-in-original is not legal and proper.

5. A show cause notice was issued to the respondent under Section 35 EE of Central Excise Act, 1944 to file their counter reply who vide letter dated 27.06.2011 submitted as under :-

5.1 It is submitted that the facts stated in para 2 (Table) appended to the revision application as Annexure-A against Sr. Nos. 1 and 2 with respect to ARE-1 No. 1/5-04-05 and ARE-1 No. 31/21-03-05 that original claims were not filed prior to 15.05.2006 are factually incorrect. Both the claims were covered by shipping bill Nos. 3393027 dated 05/04/05 and 3358256 dated 21.03.05 respectively. They were filed prior to 21.04.2005. This is evident from the respondent's letter dated 21.04.2005 addressed to the Deputy Commissioner of Central Excise, Boiser-II Division. It was duly received in his office. This is repeated in clause (ii) of para 602 of said Annexure. The statement is factually incorrect. Admittedly other claims were filed initially within time and were returned with deficiency memo. In fact all the claims were returned with the same deficiency. All the claims were initially submitted within the limitation of section 11B. They were resubmitted after compliance of the deficiency. Law is well settled that once refund claim is filed with the documents in time and it is returned for rectifying the deficiency, the date of original submission of claims is to be treated as date of submission.

6. Personal hearing scheduled in this case on 20.12.12 at Mumbai was attended by Shri A.V. Naik & Shri N.S. Patel, Advocates on behalf of the respondent who reiterated the submissions made in their written reply dated 27.06.11 and requested to uphold the impugned order-in-appeal. Nobody attended hearing on behalf of the applicant department.

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

8. The said four rebate claims amounting to Rs.2,00,093/- were rejected by original authority as time barred. IN appeal, Commissioner (Appeals) accepted the plea of respondent that claims were initially filed within one year's time limit as laid down in section 11B of CEA 1944 and therefore remanded the cases to consider the rebate claims for sanction as having been filed in time. Applicant department has now contended that said claims were filed on 15.5.2006 for the goods exported on 27.01.05, 20.02.05, 5.3.05, 26.3.05 and 10.4.05 and they do not agree with the finding of Commissioner (Appeals) that claims were filed in the month April 2005. Applicant department has further argued that in respect of ARE-I No. 26, 27, 28, 29, 30 the rebate claims were earlier filed on 7.3.05 and 25.4.05 which were returned to assessee on 6.5.05 and 19.7.05 and were resubmitted on 15.5.06 after due correction and similarly in respect ARE No. 31 and 01 the rebate claims were not filed at all initially and were filed only on 15.5.06.

9. It is observed that initially rebate claims pertaining to ARE-1 Nos. 26,27, 28, 29 & 30 were filed on 7.3.05 and 25.4.05. The said claims were returned to the claimants on 6.5.05 and 19.7.05 for furnishing proof of non-claiming the duty drawback from Customs authorities. The respondents have stated that customs issued amendment to relevant shipping bills which they received on 5.5.06 and thereafter the said claims were resubmitted on 15.5.2006. This factual position is not in dispute. There are catena of judgments wherein it is held that time limit in respect of filing of rebate /refund claims is to be computed from the date on which claim was initially filed.

9.1 High Court and CESTA Tribunal have held in following cases that original refund/rebate claim filed within prescribed time limit laid down in section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

(i) CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DL.)

- (ii) A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur Vs. Bhandiguri Tea Estate 2001(134) ELT 116(T. Kol.)
- (iv) Good Year India Ltd. Vs. CCE Delhi 2002 (15) ELT 331 (T. Del)
- (v) CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

In view of above, the said rebate claim cannot be treated as time barred since they were originally filed before department on 7.3.2005 & 25.04.2005 which were well within the limit period of one year stipulated in section 11B of Central Excise Act, 1944. Government holds that rebate claims in respect of goods exported vide above said ARE-1 No. 26,27,28,29 and 30, were filed within one year time limit as stipulated in Section 11B of CEA 1944 and therefore Commissioner (Appeals) has rightly said claim as filed in time and not hit by time limitation. Government is of considered view that case is required to be remanded back for denovo consideration, for deciding these claims on merit treating them having been filed in time.

10. As regards rebate claim pertaining to goods exported vide ARE-1 No. 31 and 01, applicant department has stated that these claims were never filed before 15.5.2006 and they were filed only on 15.5.2006. The respondent has not furnished any documentary evidence in support of his contention that these claims were also filed initially in May 2005. As such the said claims filed on 15.5.2006 after lapse of one year are clearly time barred. There is no provision under section 11B to condone any delay in filing rebate claims. As such the said claims cannot be considered for sanction being hit by time limitation clause. Government therefore holds that these claims in respect of ARE-1 No. 31 & 01 are time barred and were rightly rejected by original authority. The impugned order-in-appeal is modified to this extent.

11. The impugned order-in-appeal is partially upheld in respect of rebate claims pertaining to goods exported vide ARE-1 Nos. 26, 27, 28, 29 & 30. The original authority is directed to consider these claims as filed in time and process them for sanction subject to compliance of provisions of rule 18 of CER 2002 read with Not. No. 19/04-CE(NT) dated 6.9.04.

12. The revision application is disposed off in terms of above.

13. So ordered.



D P SINGH)
Joint Secretary (Revision Application)

The Commissioner of Central Excise,
Thane-II Commissionerate,
Navprabhat Chamber,Ranade Road, Dadar (W),
Mumbai-400 028

Handwritten initials: AH and 1



(भगवती शर्मा/Bhagwati Sharma)
सहायक आयुक्त/Assistant Commissioner
C.B.E.C.-OSD (Revision Application)
वित्त विभाग (राजस्व विभाग)
Ministry of Finance (Deptt. of Rev.)
नई दिल्ली/Dept. of Insp.
New Delhi

G.O.I. Order No.113 /2013-Cx dated 08.02.2013

Copy to:

1. The Commissioner of Central Excise (Appeals), Mumbai Zone-I, Mehar Building, Dadi Seth Lane, Chowpatty, Mumbai
2. The Deputy Commissioner, Central Excise Boisar-II Division, Thane-II, 2nd Floor, Hrishikesh Apartment Palghar-Boisar Road, Boisar, Distt. Thane
3. M/s Alok Enterprises, 212, Kalbadevi Road, 2nd Floor, Minibai – 400002.
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy



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