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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
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/181/2014-RA/1009

Date of Issue: 29.01.2019

ORDER NO. 119/2020-CX (WZ)/ASRA/MUMBAI DATED 20.01.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Koprana Ltd

Respondent : Commissioner (Appeals-I), Central Excise & Service Tax Zone,
Mumbai-I.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. PD/02/M-I/2014 dated 16.01.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai-I.

ORDER

This Revision Application is filed by the M/s Kopran Ltd., Village Savroli, Tal-Khalapur, Dist.-Raigad.(hereinafter referred to as "the Appellant") against the Order-in-Appeal PD/02/M-I/2014 dated 16.01.2014 passed by the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai-I.

2. The issue in brief is that the Appellant, exporter, had filed 03 rebate claims all dated 24.05.2012 total amounting to Rs. 1,45,716/- (Rupees One lakh Forty Five Thousand Seven Hundred and Sixteen Only) along with supporting documents under Notification No. 19/2004-CE(NT) dated 06.09.2004 under Rule 18 of the Central Excise Rules, 2002 read with Section 11B of the Central Excise Act, 1944. The goods were cleared from various manufacturers under the cover of Central Excise Invoices and ARE-1s and subsequently exported through Air Cargo Complex, Sahar, Mumbai which left for foreign destination of 14.09.2011, 28.08.2011 and 12.03.2011. The endorsements on Part B of the relevant ARE-1 confirm that the goods in question were exported on the said dates. The department then issued deficiency memos and directed them to re-submit the rebate claims after compliance of the deficiencies. Thereafter, they submitted the said claims on 18.09.2012 and was issued Show Cause Notice dated 13.12.2012 stating that the rebate claims were filed beyond the time limit of one year from the date of export, hence the claims appeared to be time barred as per Section 11B of Central Excise Act, 1944. The Deputy Commissioner (Rebate), Central Excise, Maritime Commissioner, Mumbai-I Commissionerate vide Order-in-Original No K-II/305-R/2013(MTC) dated 17.05.2013 rejected rebate claims amounting to Rs. 1,45,716/- being time barred. Aggrieved, the Appellant then filed appeal with the Commissioner (Appeals-I), Central Excise & Service Tax Zone, Mumbai-I who vide his Order-in-Appeal No. Order-in-Appeal PD/02/M-I/2014 dated 16.01.2014 rejected their appeal and upheld the Order-in-Original dated 17.05.2013.

3. Being aggrieved, the Appellant then filed the current Revision Application on the following grounds :

- 3.1 That rebate claim were originally filed within prescribed period of limitation and not being time barred under Section 11B of the CEA, 1944 and thus the adjudicating authority erred in rejecting the rebate claims by holding that since the same were resubmitted/ re-filed after the lapse of the time-limit/prescribed period of limitation of one year, were time barred.
- 3.2 That a perusal of the relevant provisions of law as also various case law decisions would show that so long as the original rebate claim is filed within the prescribed period of limitation, the mere fact that the same were resubmitted after removing objection/ deficiencies pointed out by the department would not mean that the same were not filed in time and that they were time barred.
- 3.3 That Chapter 8 of the CBEC's Excise Manual of Supplementary Instructions 2005 deals with 'Export under claim of Rebate' , Para 1 of Part-IV of the Chapter 8 titled 'Miscellaneous' provided for time limit for disposal. Hence the deficiencies, if any, should be intimate to the claimant within 15 days once collectively and piecemeal queries should be avoided. However, that does not mean that the office is justified in returning the rebate claim itself and the same is contrary to the above directions.
- 3.4 That they prayed the impugned order be set aside and the refund claim be allowed with consequential reliefs.

4. The Applicant delayed filing the Revision Application by 26 days along with the along with the Miscellaneous Application for Condonation of Delay (herein after as 'COD').

5. A personal hearing in the case was held on 30.08.2019 which was attended by Mrs Sparsh Prasad, Advocate on behalf of the Appellant. The

Appellant stated that COD was due to death of their employee. The reiterated the submission made in Revision Application.

6. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

7. Government first proceeds to take up the application for COD in filing the current Revision application by the Applicant. After hearing the COD application in detail, Government condones the delay of 26 days and proceeds to examine the case on merits.

8. Government observes that the issue involved in the instant Revision Application is whether Appellant is entitled for the rebate claim which was rejected on the grounds of limitation or not.

9. Government finds that the Applicant's initial claims were received in the Assistant Commissioner's office on 24.01.2012 and 24.05.2012 which were well within the time i.e. one year from the date of export. On issuance of Deficiency Memo by the Department, the Applicant resubmitted their claims by making the deficiencies good and while resubmitting the claims under their letter dated 18.05.2012 (recd by the depts on 24.05.2012) and 17.09.2012 (recd by the depts on 18.09.2012) and had given reference to the Range Superintendent's letter/memo dated 19.03.2012 and 31.07.2012 respectively. Thus all the three subsequent applications/claims resubmitted in the office of Assistant Commissioner was allotted RC Nos. 9260 dated 24.01.2012, 9263 dated 24.01.2012 and 1259 dated 24.05.2012.

10. Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court Tribunal and GOI, 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. Government places reliance on the case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}] and while disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.

Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

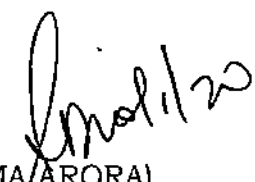
11. Applying the ratio of the afore stated judgment, Government holds that rebate claims filed by the respondent are made within period of one year from the date of export. In the instant case the original date of filing of these claims shall be taken as the date of submission of the original claims and subsequent applications are in continuation of the original claims and therefore are not barred by limitation under Section 11B of the Central Excise Act, 1944.

12. In view of foregoing discussions, it is quite clear that time limitation is to be computed from the initial date of filing such applications as available in relevant office records. Government holds that, since the said applications are initially filed within stipulated time limit i.e. on 10.05.2011, the same are to be treated as filed in time. The applications are to be decided on merit in accordance with law treating the same as filed in time. In view of above position, case is required to be remanded back for fresh consideration.

13. In view of the above, Government, sets aside the impugned Order-in-Appeal No. PD/02/M-I/2014 dated 16.01.2014 and remands back the case to original authority to decide the same afresh, after due verifications of documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

14. The Revision Application is disposed off in terms of above.

15. So ordered.


(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 119 /2020-CX (WZ)/ASRA/Mumbai DATED 20.01.2020.

To,
M/s Koprani Ltd.,
Village Savroli,
Tal-Khalapur,
Dist.-Raigad.

Copy to:

1. The Commissioner of GST & Central Excise, Belapur Commissionerte.
2. The Deputy / Assistant Commissioner(Rebate), GST & CX , Belapur Commissionerte
3. Sr. P.S. to AS (RA), Mumbai
4. Guard file
5. Spare Copy.