

Date of Issue...02/11/13

ORDER NO. 12/13-Cx DATED 04-01-13 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** : ORDER IN REVISION APPLICATION FILED, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944 AGAINST THE ORDER-IN-APPEAL No. 31/2011(P) dated 18.03.2011 passed by Commissioner of Customs & Central Excise (Appeals), Chennai.

**APPLICANT** : M/s Larsen & Toubro Ltd., Puducherry.

**RESPONDENT** : The Commissioner of Central Excise, Puducherry.

\*\*\*\*\*

Order

This revision application is filed by M/s Larsen & Toubro Ltd., Puducherry against the Order-in-Appeal No. 31/2011(P) dated 18.03.2011 passed by Commissioner of Customs & Central Excise (Appeals), Chennai with respect to Order-in-Original No. 01/2009 dated 09.04.2009 passed by the Assistant Commissioner of Central Excise, Puducherry III Division, Puducherry Commissionerate.

2. Brief facts of the case are that the Applicants are engaged in manufacture of 'Galvanized Transmission Line Towers and parts' of prefabricated steel structure falling under Tariff item No. 73082011 of the First Schedule to CETA 1985. They have manufactured and exported 'Galvanized Transmission Line Towers and parts of prefabricated steel structure' under ARE-1 on payment of duty by making debit entry in their Cenvat Credit Account under Central Excise supervision and sealing and filed a rebate claim under Section 11B (1) of the Central Excise Act, 1944 on 05.02.2009 for Rs. 2,24,289,015/- towards duty paid on their finished goods (Transmission Line Tower and parts) exported out of India vide ARE-1 during Sept. 2007, Oct. 2007, Nov. 2007 and Dec. 2007. The applicant while filing the rebate claim on 05.02.2009 had stated that as renovation work has taken place in their office they were not able to locate the original ARE-1s and hence they could file the original rebate claims only on 05.02.2009. Further, the applicant vide their letter dated 03.04.2009 had also submitted that in case the rebate claims are not sanctioned for any reason, a speaking order may be passed directly to them without issue of Show Cause Notice and personal hearing. As the applicant had filed the rebate claim beyond the relevant date contravening the provisions of Section 11B(1) of the Central Excise Act, 1944 the lower adjudicating authority vide impugned Order-in-Original had rejected the rebate claim for Rs. 2,24,89,015/- as hit by time bar.

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

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 the Central Government on the following grounds:-

4.1 The lower appellate authority ought to have taken into consideration the unassailable facts of the applicant's case namely that they have been in receipt of such rebates on a regular basis and that only in respect of the impugned exports they could not file their rebate claims in time on account of the extraneous situation in which they were placed preventing them from making their claims which is due to factors beyond their control on account of the non availability of the original documents without which there was absolutely no scope to be admitted and sanctioned in the interest of justice.

4.2 The lower appellate authority also ought to have considered that when the provisions of law or the procedures contemplated do not provide them with any alternative mechanism to seek their legitimate claim in time in cases where the original documents were misplaced or lost which position was also confirmed to them by the officers concerned, he ought to have considered the said facts judiciously and sympathetically and allowed their legitimate claims to be entertained as a special case.

4.3 The lower appellate authority also ought to have taken note of the fact that all their statutory documents such as ARE-1 or the Shipping Bill etc., having subscribed to the fact that the exports are being made under claim for rebate, and accordingly ought to have held that in the light of the fact of the applicant having made known his intention to claim the rebate the non filing of the procedural form C cannot stand in the way of their obtaining their legitimate rebate.

4.4 The lower appellate authority also ought to have known that when goods are exported under bond there is no time limit for redeeming the bond and applying the same analogy ought to have accepted the plea of the applicant herein to treat the reversal made by them at the time of the export of their final products as a security

towards fulfillment of the condition of exports and accordingly ought to have restored the credit to which they were fully entitled to on the authority being satisfied about the actual export of the goods the failure of which had resulted in denial of justice to them.

4.5 The lower appellate authority even if were to be of the view that the law does not permit the claim to be entertained beyond the period of limitation atleast ought to have passed orders ordering the re-credit of the duties so paid by them into their Cenvat account to being satisfied that the impugned goods were in fact exported, by treating the payment of the duty on the said goods as equivalent to furnishing of a bond under rule 19 of the Central Excise Rules, 2002.

4.6 The order of the lower appellate authority refusing to entertain the claim of the applicant is violaltive of Art. 265 of the Constitution of India as he had otherwise confirmed the duty on exported goods which are otherwise leviable to duty of excise in terms of Sec. 3 of the Central Excise Act.

5. Personal hearing was scheduled in this case on 14.12.2012 S/Shri N. Viswanathan, S. Janakiraman and S. Baskaran advocates appeared on behalf of the applicant who reiterated the grounds of revision application. Shri Saroj Kumar Sadangi, Assistant Commissioner, Puducherry III Division and G. Karthikesan, Superintendent Puducherry III appeared for hearing Division on behalf of the respondent department stated that the Order-in-Appeal being legal and proper may be upheld.

6. Government has carefully gone through the relevant case records and perused the impugned order-in-original and order-in-appeal. Government notes that the revision application is filed with a delay of 8 days. The applicants submitted that they dispatched the revision application well within the time and the said delay caused was beyond their control as it was not intentional. Government condones the delay and takes up the issue for decision.

7. On perusal of records Government observes that the adjudicating authority rejected the rebate claim as time barred as the applicant failed to file the said claim before expiry of the stipulated period of one year from the relevant date in terms of section 11B(1) of Central Excise Act, 1944 read with explanation B(a)(i) to the said section. The Commissioner (Appeals) upheld the impugned order on the very ground. Now the applicants have filed this revision application on the ground stated at para 4 above. The application admitted the said delay in filing the claim and stated that this was happened as the concerned original documents were misplaced.

8. Government notes that 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. Government observes that it is mandatory to file rebate claim within one year in view of said statutory requirement of section 11B. There is no provision under section 11B of Central Excise Act, 1944 for condonation of any delay in filing rebate claim and therefore the rebate claim has to be treated as time barred.

10. Government note that as per below mentioned judgments the rebate claim filed after one year time limit as stipulated in section 11B of Central Excise Act, 1944 is liable to be rejected as time barred and can not be sanctioned.

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 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:-

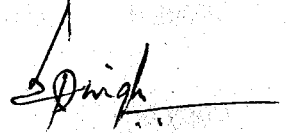
*"11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central 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 stipulated time limit of one year being time barred in terms of section 11B of Central Excise Act, 1944 is rightly rejected. Therefore, Government finds no infirmity in the impugned Order-in-Appeal and upholds the said order.



12. The revision application is rejected in terms of above.
13. So, ordered.

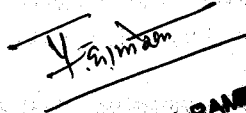


( D.P.Singh )

Joint Secretary ( Revision Application )

M/s Larsen & Toubro Ltd.,  
ECC Division, TLT Works Mylan Road,  
Sedarpet, Puducherry.

(Attested)



**K. RAMESHWAR**  
विशेष कार्य अधिकारी / OSD-II (RA)  
वित्त मंत्रालय, (राज्य वित्त विभाग)  
Ministry of Finance (Deptt. of Fin.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

Order No. 12 /2013-Cx dated 04-01-2013

Copy to:-

1. The Commissioner of Central Excise , Post Box. No. 104, Goubest Avenue, (Beach Road), Puducherry-01
2. The Commissioner (Appeals), Central Excise, 26/1 Mahatma Gandhi Road,- Chennai.
3. The Assistant Commissioner of Central Excise, Puducherry-III Division No. 14 Municipal Street Ajeer Nagar, Puducherry-10.
4. Shri N. Viswanathan, Flat No. 8A, RMAS' No. 26, South Mada Street Sri Nagar Colony Saidepet, Chennai -15.
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

  
(P.K. Rameshwaram)  
OSD (Revision Application)