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SPEED POST



F.No.195/796/2011-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...13/11/13

ORDER NO. 1234 /13-Cx DATED 09.09-2013 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. US/232/RGD/11 dated 9.9.2011 passed by  
Commissioner of Central Excise (Appeals) Mumbai  
Zone-II

APPLICANT : M/s Hernaba Industries Ltd., Borivali (W), Mumbai

RESPONDENT : Commissioner of Central Excise, Raigad  
Commissionerate

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**ORDER**

This revision application is filed by M/s Hernaba Industries Ltd., Borivali (W), Mumbai against the order-in-appeal No. US/232/RGD/11 dated 9.9.2011 passed by Commissioner of Central Excise (Appeals) Mumbai Zone-II with respect to order-in-original No. 1142/10 dated 21.10.2010 passed by ACCE (Rebate) Raigarh Commissionerate.

2. Brief facts of the case are that M/s Hernaba Industries Ltd., manufacturer company situated at 101/102, Kanchanganga, Factory Lane, Borivli (W) Mumbai-400092, holding Central Excise Registration No. AAACH3787QXM001 have filed the following rebate claims under the provisions of Rule 18 of Central Excise Rules, 2002 read with notification No. 19/2004-CE(NT) dated 06.09.2004.

Sr. No.	RC No.	RC-Date	ARE-1 No.	ARE-1 date	MR-Date	Amount Claimed
1	25784/2009-10	18.01.2010	132	19.09.2008	27.09.2008	414402
2	25785/2009-10	18.01.2010	130	17.09.2008	29.09.2008	414402
3	26822/2009-10	27.01.2010	201	05.01.2009	12.01.2009	427761
4	26823/2009-10	27.01.2010	202	05.01.2009	09.01.2009	565009
5	26824/2009-10	27.01.2010	203	04.01.2009	12.01.2009	106949
6	08693/2010-11	22.07.2010	113	04.09.2008	04.09.2008	294933
					TOTAL	22,23,456

2.1 As seen from the case records it is evident that the impugned goods were shipped in September 2008 and January 2009 as can be seen from respective Mate receipts whereas the rebate claims have been filed on 18.01.2010, 22.01.2010 and 27.01.2010, obviously after one year from the relevant date, that is to say date of

shipment. After following the due process of law, the adjudicating authority rejected the said rebate claims as time barred.

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

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 Commissioner of Central Excise (Appeals) has observed that there is no dispute about the submission of impugned rebate claims after expiry of the stipulated period of one year prescribed under Section 11B. The law in this regards is settled and he also relied upon the case laws which are not applicable to the applicant's case. The goods which were exported were duty paid excisable goods. Applicant say and submits that goods have been exported, even if all or any of conditions laid down in nay notification issued under the rule have not been complied with. The belated delay cause in submitting the documents with regards export promotion copies were not received in time, and it was procedural delay by the customs department. It has been established that goods have been exported. IN support applicants had also cited and relied upon the Hon'ble Bombay High Court's judgment reported in the year 2010 (254) ELT 235 (Bom). The learned Commissioner (Appeals) has not given any findings on it. It is evident that the impugned goods were shipped in September 2008 and January 2009 as it can be seen from the respective Mate receipt whereas the rebate claims were filed on 18.01.2010, 22.01.2010 and 27.01.2010, i.e. after one year form the date of shipment.

4.2 The position of law is well settled that any procedure prescribed by the subsidiary legislation has to be in aid of justice and procedural requirements cannot be read as defeat the cause of justice. The goods were duty paid character and physically export out of India. The shipping bills were also endorsed by the Customs authority. In fact the endorsement requirement on the copies shipping bills itself stipulates the mandatory requirement. The delay in obtaining in the export promotion copies are also

explained to the Commissioner of Central Excise (Appeals). Thus order of the Commissioner (Appeals) and his findings are, therefore, vague, cryptic, misconceived arbitrary as well as without jurisdiction.

4.3 The Commissioner of Central Excise (Appeals) stated in his findings that as per the provisions of Chapter 11 of CBEC Manual 2001-02 that the applicant should have filed their rebate claim, albeit incomplete, as per provisions of CBEC Manual 2001-02. He also raised the question during the course of personal hearing 'why they (applicant) did not filed rebate claim along with available documents?' Applicant's Export executive had explained the correct position but it appeared that this was ignored by the Commissioner (Appeals). The factual position was already mentioned in the memorandum of appeal. The applicant had also forwarded these rebate claims application within the stipulated time but the desk officer did not accepted these rebate claims without proper documents.

4.4 The law is well settled on this point that substantial benefit of rebate on exported goods should not be denied for procedural omissions by decisions of Hon'ble High Court, Tribunal as well as Government of India. In support applicant is also relied upon such decisions. Few de decisions are cited hereunder :

- (i) 2009(233) ELT 46 (Guj) Cosmonaut Chemicals vs. Union of India
- (ii) 2010 (254) ELT 235 (Bom) A.C. Mehta vs. Union of India
- (iii) 2011 (271) ELT 471 (GOI) In RE: Dagger Forst Tools LT

5. Personal hearing scheduled in this case on 7.8.2013 at Mumbai was attended by Shri N.S. Patel, Advocate on behalf of the applicant who reiterated the grounds of revision application.

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, it is observed that the goods in question were exported in September 2008 and January 2009 whereas the rebate claims were filed on

18.01.2010, 22.01.2010 and 27.01.2010 after lapse of one year's time limit as laid down in section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules 2002. Applicant has not disputed these factual details. But he has contended that they had in fact submitted the rebate claims in time but the desk officer did not receive the same. In this regard, it is noted that this contention of the applicant is not supported by any documentary evidence. Moreover, this plea was also not taken before lower authorities. As such this contention is not acceptable. Applicant has further contended that the delay in submission of rebate claim was due to late receipt of export promotion copy of shipping bill. As per statutory provision of section 11B, the rebate claim is to be filed within one year from the date of export of goods. There is no provision to condone the delay in filing rebate claims. As such the rebate claim filed after one year cannot be accepted.

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.

It is further clear from above provisions that one year's time limit is to be counted from the date on which goods were shipped out of India. So, the said claim is hit by time limitation.

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 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 application is thus rejected in terms of above.

13. So ordered.

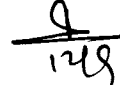


(D.P. Singh)

Joint Secretary (Revision Application)

M/s Hernaba Industries Ltd.,  
101/102 – Kanchengunga,  
Factory Lane, Boriwali (W),  
Mumbai – 400 092

Attested

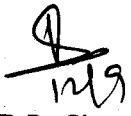


(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C B E C - O S D (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
नई दिल्ली/New Delhi

**Order No. 1234/13-Cx dated 09.09.2013**

Copy to:

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2. Commissioner of Central Excise (Appeals), Mumbai Zone-II, 3<sup>rd</sup> Floor, Utpad Shulk Bhavan, Plto No. C-24, Sector-E, Bandra-Kurla Complex, Bandra (E), Mumbai – 400 051
3. The Assisant Commissioner of Central Excise (Rebate), Raigad Commissionerate, Plot No.1, Kendriya Utpad Shulk Bhavan, Sector-17, Khandeshwar, Navi Mumbai – 400 614
- ✓ 4. PA to JS(RA)
5. Guard File.
6. Spare Copy

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