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**F.No. 195/1110/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

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NEW DELHI-110 066

Date of Issue...*13/11/13*

Order No. 1241 /2013-CX dated 11-09-2013 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 order-in-appeal No.BC/266/SURAT-II/2011 dated 30.09.11 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Surat-II.

Applicant : M/s Apar Industries Ltd., Chembur, Mumbai

Respondent : Commissioner of Central Excise, Surat-II

ORDER

This revision application is filed by the applicant M/s Apar Industries Ltd., Chembur, Mumbai against order-in-appeal No.BC/266/SURAT-II/2011 dated 30.09.11 passed by the Commissioner (Appeals) of Central Excise, Customs & Service Tax, Surat-II with respect to order-in-original passed by the Deputy Commissioner, Central Excise & Customs Division-II, Ankleshwar.

2. Brief facts of the case are that the applicants submitted various claims of Rs.9.11,255/- on 24.12.2008. The applicant filed rebate claim on 19.12.2008 by registered post. Superintendent (Rebate) vide letter dated 24.12.2008 returned the rebate claim to the unit asking them to produce certain documents/information, mainly because the name and address of the authority from whom rebate claim shall be claimed was mentioned as Commissioner of Central Excise Raigad, New Panvel-410206. The applicant again submitted rebate claim documents on 1.1.2009 and intimated that the Bank Realization Certificates will be submitted on receipt and they submitted the rectified declaration regarding authority with whom rebate shall be claimed. On receipt of the rebate claim, the above mentioned rebate claims were forwarded to the Range Superintendent for scrutiny, the Range Superintendent vide letter dated 10.2.2010 reported to the Division office that the claim is hit by the time bar as the same is filed after expiry of one year from the date of export of goods and the same is required to be rejected. Thereafter the divisional office vide letters dated 12.2.2010 and 23.3.2010 asked the applicants/claimant to submit written submission on the point of time bar aspect for rejection of rebate claim. Ultimately adjudicating authority vide impugned order-in-original rejected the rebate claims vide order-in-original No.280/SRT-II/Rebate/10-11 dated 4.5.2010.

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

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

4.1 The Adjudicating Authority, while rejecting the rebate claim of Excise duty of Rs.9,11,255/- paid on exports, had observed that the Rebate Claim was filed by the Applicant beyond the period of Limitation of one year as provided under Section 11B of the Central Excise Act, 1944, though all the shipment documents i.e. ARE-1, Shipping Bills, etc. were initially filed within the period of limitation as "Proof of Exports", instead of "Rebate Claim". It is un-disputed fact that the provisions of Section 11B provides one year time limit for filing rebate claim on exports from the date of shipment/exports. The Rules issued there under also provide and prescribe the documents, which are necessary to be submitted along with claims, evidencing the proof for physical exports of goods out of Country. Since, all the relevant original documents were initially filed, though inadvertently, as a 'Proof of Export' to the Department and hence documents were not traceable at our end. It was located and collected back from the department only after the period of limitation and hence there is a delay. When the documents were already filed with the Department within the period of limitation, though as a "Proof of Export", the subsequent formal claim cannot be treated as barred by limitation, thereby taken away their substantive right.

4.2 The submission of required documents and filing the claims within the time prescribed are the procedural requirements, which cannot and never take away the substantive right of the Applicants' vested by the law. Hence, the

period of limitation, in the present case, under the circumstances, may be counted from the date of shipment to the date of filing "Proof of Export", as the proof of exports has been submitted well within the prescribed time, which facts have not been disputed by the Authorities below. The factum of actual export has also not been disputed at any time.

4.3 The Appellate Commissioner had, though made a mention in its order dated 20.09.2011 (at Para 5, 6.2 and 6.4 thereof), after due verification of the documents/evidences submitted by the Appellant that all the original shipment documents were initially filed as a "Proof of Export" to the Jurisdictional A.C. who is also a Rebate Sanctioning Authority. But, the plea of the Appellant was rejected on the ground that the Appellant has raised this point for first time before her at the Appellate stage and not before the adjudicating authority. It is submitted that the Appellant was continuously following up for the evidences/documents with the new company i.e. Eliokem India Pvt. Ltd., to whom the Unit was sold and also with the Range/Divisional Central Excise Authority. These evidences were received and made available from the Eliokem/Jurisdictional A.C. only at the Appeal Stage and hence this prayer was made before the Appellate Commissioner. In fact the case was adjourned after the first hearing and next date fixed after 45 days just to permit the Appellants to produce the evidence to establish & substantiate the plea taken in Grounds of Appeal that the Rebate Claim -- was filed earlier at the time of submission of "proof of export". If the stand of the Department was --- which is now reflected in the impugned order-in-appeal --- that the new plea could not be raised for the first time before the Appellate Authority ; there was no sound basis or reason to adjourn the hearing or look into the evidence produced by the applicants and filed before the Appellate Authority.

The applicant has stated various judgement in their defence including Bombay

High Court judgement in the case of Uttam Steel Vs UOI 2003(158) ELT 274 (BOM), and Gujarat High Court judgement in the case of Casmonant Chemicals Vs UOI 2008-TIDL-473-HC-Ahd-Cx.

5. Personal hearing was scheduled in this case on 7.8.2013. Shri I.C.,Thakur, DGM-Indirect Tax and Shri D.P.Bhave, Advocate appeared on behalf of the applicants 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, Government observes that the said rebate claims were filed on 24.12.08 in respect of goods shipped in the month of August, September and October 2007. The rebate claims were filed after stipulated time limit of one year as laid down in Section 11B of Central Excise Act 1944 read with Rule 18 of Central Excise Rules 2002. The original authority has rejected the said claim as time barred. Commissioner (Appeals) has upheld the said order-in-original. Now the applicant has filed this revision application on the grounds stated at para (4) above.

8. Applicant has claimed that he had initially filed the proof of export in Annexure-19 with the department inadvertently and the said documents were withdrawn after the lapse of limitation period and thereafter rebate claim was filed on 24.12.08. Applicant has requested that initial date of filing proof of export in Annexure-19 with the department may be taken as date of filing the rebate claim since the documents were with department. In this regard, it is observed that proof of export in Annexure-19 is required to be submitted in terms of procedure prescribed under Notification No.42/01-CE (NT) dated 26.6.01 issued under Rule 19 of Central Excise Rules 2002. Whereas, the rebate

claim in prescribed format with specified document is required to be filed as per procedure prescribed under Notification No.19/04-CE(NT) dated 6.9.04 issued under Rule 18 of Central Excise Rules 2002. The rebate claim along with requisite document as stipulated in para 8.3 Part-I of Chapter 8 of CBEC Excise Manual of Supplementary Instructions was filed only on 24.12.08. The proof of export filed with department by mistake or otherwise cannot be accepted as rebate claim as contended by applicant.

9. 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.

10. 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.

11. 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 :-

11.1 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?"

11.2 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."

11.3 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.

11.4 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.

11.5 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.

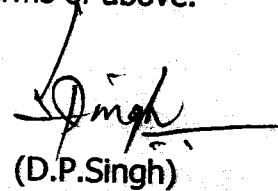
12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. 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."

12. 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.

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

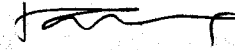
14. So ordered.



(D.P.Singh)

Joint Secretary (Revision Application)

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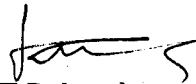
(टी. आर. आर्य / T.R. ARYA)
अधीक्षक, आर.ए./Superintendent
वित्त मंत्रालय, (राजस्व विभाग)
Ministry of Finance, (Deptt. of Re.
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

GOI Order No. 124 /13-CX dated 11-09-2013

Copy to:

1. Commissioner of Central Excise, Customs & Service Tax, Surat-II, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395 001.
2. Commissioner of Customs & Central Excise (Appeals), Surat-II, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395 001.
3. The Assistant Commissioner of Central Excise & Customs, Division-II Ankleshwar, Plot No.C/4/9, Behind Roshan Cinema, GIDC, Ankleshwar, Gujarat-393002
4. Shri D.P.Bhave, Advocate, 15 Shri Kripa, Ramkrishna Society, Ram Mandir Path, Kherwadi, Bandra (W), Mumbai400051
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED



(T.R.Arya)

Superintendent (Revision Application)

The first part of the report deals with the general situation in the country. It is noted that the economy is still in a state of depression, and that the government has taken various measures to stimulate it. The second part of the report deals with the specific measures taken by the government to improve the situation. It is noted that these measures have had a limited effect, and that further action is needed.

The third part of the report deals with the financial situation of the country. It is noted that the government has a large budget deficit, and that this has led to a sharp increase in the national debt. The fourth part of the report deals with the social situation in the country. It is noted that there is a high level of unemployment, and that the living standards of the population are low.

The fifth part of the report deals with the political situation in the country. It is noted that there is a general feeling of dissatisfaction with the government, and that there is a strong desire for reform. The sixth part of the report deals with the international situation. It is noted that the country is in a difficult position, and that it needs to take steps to improve its relations with other countries.