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SPEED POST



F.No.195/794-795/2011-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. 1244-1245/13-Cx DATED 12-09-2013 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. AGS/359/NGP/11 & AGS/360/NGP/11 both dated  
7.7.2011 passed by Commissioner of Central Excise  
(Appeals) Nagpur

APPLICANT : M/s Zim Laboratories Ltd., Nagpur

RESPONDENT : Commissioner of Central Excise, Thane-II Nagpur

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**ORDER**

These revision applications are filed by M/s Zim Laboratories Ltd., Nagpur against the orders-in-appeal No. AGS/359/NGP/11 & AGS/360/NGP/11 both dated 7.7.2011 passed by Commissioner of Central Excise (Appeals) Nagpur.

2. Brief facts of the case in respect of RA No. 195/794/11 (Order-in-Appeal No. 360/7.7.2011)

M/s Zim Laboratories Ltd., B-21/22 MIDC Area, Kalmeshwar, Dist. Nagpur (hereinafter referred to as the 'Claimant') are manufacturer of Pharmaceutical Products falling under Chapter Heading No. 29 & 30 of the schedule to the Central Excise Tariff Act, 1985, having PAN based Central Excise Registration No. AAACZ0200EXM001. The claimant has exported 431250x1x20 Tab of Krismet 400 Tab to M/s Kris Mediks Nig Ltd., 268, Agbani Road, Enugu, Enugu State – Niegeria through Merchant Exporter M/s Promo Life Science 8, Maruti Compound, Andheri , Mumbai – 440072 and required Disclaimer Certificate have also been produced by the claimant party. The clearances for export have been made on payment of Central Excise duty under claim of rebate of duty on following ARE-1.

Sr. No.	ARE-1 No/ Date	Qty	Value (Rs.)	Duty (Rs)	Ed. Cess	H. Ed Cess	RG-23 (Input) No. & Date	Pt.II E. Dt.
1.	135/09-10 Dt.07/08/09	431250x1x20 (Total 575 Boxes)	4377188	175088	3502	1751	486 31/08/09 180341	Dt.
	Total	16000x50x1x10	4377188	175088	3502	1751	180341	

The Claimant filed a rebate claim of Rs. 1,80,341/- vide their letter ZLL/KLM/2010-11/04 dated 27.11.2010 on 29.11.2010.

As per Section 11B of Central Excise Act, 1944, read with Explanation (B) (a) (i) the relevant date for the purpose of the rebate claim of duty should be filed within one year from the date of export.

"relevant date" means –

- (a) (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

During scrutiny of the rebate claim it is noticed that the following goods have been shipped on Board after a period of one year as per the relevant bill of lading No. as mentioned below :-

Sr. No.	ARE-1 No/ Date	Qty	Value (Rs.)	Duty (Rs)	Ed. Cess + H. Ed Cess	Shipping Bill No.	Bill of Lading No.	Date of Export (goods leaves India)
1.	135/09-10 Dt.07/08/09	523 Boxes	3981337	159254	3186	7564404 Dt. 02.08.2009	IN 3252384 Dt. 29.08.09	29.08.2009
2.	135/09-10 Dt.07/08/09	52 Boxes	395849	15834	316	8269095 Dt. 20.03.2010	IN 3258963 Dt. 03.05.10	03.05.2010

Adjudicating authority rejected the part rebate claim of Rs.1,64,033/- as time barred since the said claim was filed on 29.11.2010 whereas goods were shipped out of India on 29.08.2009.

2.1 Brief Facts of the case in respect of RA No. 195/795/11 (order-in-appeal No. 359/7.7.2011

The applicant is a manufacturer of Pharmaceutical Products falling under Chapter Heading No. 29 & 30 of the Schedule to the Central Excise Tariff, 1985. The applicant has exported 47920X50XIX10 Tab of Droprofen-400 to M/s Deevick (NIG) Ltd., No.13

Oyadiran Estate, Sabo, Yaba Lagos-Nigeria through Merchant Exporter M/s Om Exports 56, Popat Wadi, Kalbadevi, Mumbai-440002. The applicant has filed a rebate claim of Rs.3,31,684/-. The adjudicating authority after verification of documents through Range Officer in accordance with the statutory provisions of Rule 18 of Central Excise Rules, 2002; Notification No. 19/2004-CE (NT) dated 06.09.2004 and para-1 (iii) of Part-I of Chapter 8 of Supplementary Instructions of CBEC's Excise Manual 2010-11 sanctioned the rebate claim of Rs. 1,65,425/- only under Rule 18 of the Central Excise Rules, 2002, read with Section 11-B of the Central Excise Act, 1944 and rejected the remaining rebate claim of Rs. 1,66,259/- holding it time barred.

3. Being aggrieved by the said order-in-original, applicant filed appeals before Commissioner (Appeals) who rejected both the appeals and upheld the rejection of said rebate claim.

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 common grounds :-

4.1 Though personal hearing was granted by the first Appellate Authority, yet he had avoided adjudicating the issue in the proper perspective in as much as he has not considered that after the clearance of goods from the factory and export thereof from the Port has been shipped on two dates and the proof of export was issued to the applicant only after the entire consignment of one ARE-1 left India, which resulted in filing of rebate claim with delay. Issuing of certified copy of ARE-1 is not within the control of the Applicant.

4.2 The applicant is aware that a statutory authority cannot traverse beyond the confines of law and cannot grant relief by passing the bar of limitation, but the first Appellate authority did not rely upon the genuine facts of the case while rejecting the appeal thereby defeating the legitimate rebate claim. But it is also a fact on record that the goods for export left their factory under one ARE-1 and due to the circumstances prevailing at the Port of Export it was split into two, which were beyond the control of the applicant.

4.3 In terms of para 8.3 of Chapter 8 of Supplementary Instructions of CBEC's Excise Manual 2010, the original copy of ARE-1 duly certified by the Customs Authority, required to be submitted along with the rebate claim. Until and unless the original copy of ARE-1 is received, the applicant was unable to submit rebate claim to proper authority. It was beyond the control of the applicant to submit the rebate claim prior to receipt of original ARE-1. The entire consignment belonged to one ARE-1, the same was to be treated as a single consignment for all purposes. The proof of export would be issued to the applicant only after the entire consignment left India and not before that. The ARE-1 copy evidencing the proof of export, handed over to the applicant after the entire consignment was exported. The relevant date for the purpose of Section 11B of the Central Excise Act, 1944 has to be the date of export of the entire consignment. There cannot be two relevant dates for rebate of a single consignment. In this regard applicant rely on the decision of the Hon'ble High Court of Gujrat in the case of Cosmonaut Chemicals vs. UOI reported in 2009 (233) ELT-46 (Guj.). As soon as original copy of ARE-1 is received, the applicant filed the rebate claim with the proper authority, but by that time one year time was exhausted for the first part of consignment exported. The circumstances were beyond the control of the applicant.

5. Personal hearing scheduled in this case on 8.8.2012 at Mumbai was attended by Shri B.K. Adley, Consultant on behalf of the applicant who reiterated the grounds of revision application. Since the issue involved in both the cases is same, therefore, both revision applications are taken up together for decision by this common order.

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

7. In the instant cases the part rebate claims are mainly rejected since they were filed after lapse of one year's time limitation as laid down under section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules 2002. The applicant has now filed these revision applications on the grounds stated in para 4 above.

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. 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. The reason given by applicant for delayed filing of rebate claims are of no help to applicant since refund claim filed after one year's time limit cannot be entertained under Section 11-B.

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 to be complied with. The statutory requirement can be condoned only if there is such provisions under Section 11B to condone the delay in filing rebate claim. Since there is no provision for condonation of delay in terms of Section 11B, the rebate claim has to be treated as time barred and cannot be entertained after lapse of one year's time limit.

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 orders-in-appeal upholding the rejection of said claims as time barred.

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

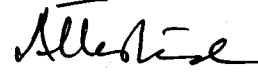
13. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Zim Laboratories Ltd.,  
B-21/22 MIDC Area, Kalmeshwar,  
Dist. Nagpur (Maharashtra)




(टी. आर. आर्य / T.R. ARYA)  
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Ministry of Finance, (Deptt. of Re...  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

Order No. <sup>1244-1245</sup> /13-Cx dated 12-9-2013

Copy to:

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3. The Assisant Commissioner of Central Excise, Nagpur Division-II, Telangkhedi Road, Civil Lines, Nagpur – 440 001
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(T.R. Arya)  
Superintendent(Revision Application)

