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SPEED POST



F.No. 195/638/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue...12/9/13

Order No. 1249/13-cx dated 12-9-2013 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,
1944 against the Order-in-Appeal No.
M-I/AV/269/2011 dated 06.05.2011
passed by Commissioner of Central Excise,
(Appeals), Mumbai.

Applicant : M/s. Jyoti Steel Industries,
13, Mira Co-op. Indl. Estate,
Opp. Amar Palace Hotel, Mira,
Dist: Thane.

Respondent : Commissioner of Central Excise,
Mumbai-I.

ORDER

This revision application is filed by the applicant M/s. Jyoti Steel Industries, 13, Mira Co-op. Indl. Estate, Opp. Amar Palace Hotel, Mira, Dist: Thane against the Orders-in-Appeal No. M-I/AV/269/2011 dated 06.05.2011 passed by Commissioner of Central Excise (Appeal), Mumbai -I, with respect to Order-in-Original No. 78/2007-08/ BHY-'R' dt. 23-10-2007 passed by the Assistant Commissioner, Central Excise, Thane-II.

2. Brief facts of the case are that the applicant is holding Central Excise Registration and are engaged in the manufacture and export of 'stainless steel bright bars' falling under chapter 72 of First Schedule to Central Excise Tariff Act, 1985. The applicant filed a rebate claim for Rs. 4,64,412/- on 26-07-2007 in respect of the finished good cleared for export on 26-03-2006 vide ARE-I No. 343 dated 26-03-2006. On scrutiny of the rebate claim it was noticed that the applicants filed the same after a period of one year from the date of export and therefore was hit by limitation of time bar in view of explanation of the expression 'relevant date' given in sub-section (5) , clause (B) sub para (i) of section 11B of central Excise Act, 1944. Therefore the applicant was issued show cause notice on 17-09-2007 for rejection of their rebate claim under the provisions of section 11B of Central Excise Act, 1944. The case adjudicated by the adjudicating authority who rejected the rebate claims.

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

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 (Appeals) in paras 5 and 6 of her impugned Order-in-Appeal has accepted that the delay in filing the rebate claim had occurred was unintentional and beyond their control and was entirely on account of late release of

documents by the Customs authority and therefore the limitation of one year could not be applied as the delay was not on account of their own action. The applicants had also filed details of correspondences undertaken by their steamer agent with the customs authorities. It is evident from the correspondence filed by the applicants that the export promotion copy of the shipping bill had not filed EGM for the vessels on which the goods were said to have been exported. Although the applicants tries to file the rebate claim within the time limit without the export promotion copy of the shipping bill, the department officers refused to accept the refund claim within the time limit. Therefore the observations of the Commissioner (Appeals) that nothing prevented the applicants in submitting all other corroborative evidences in respect of their claim so as to ensure that rebate claim was filed in time is passed casually without appreciating the ground realities as the applicants were prevented from filing the rebate clam within the stipulated time limit of one year.

4.2 The Commissioner (Appeals) in paras 7-9 of her impugned order has gravely erred in solely relying upon para 5 of the Hon'ble Tribunal decision in the case of precision control V CCE Chennai, 2004 (176) ELT 147 (Tri.-Chennai) without appreciating he submissions of applicants in paras 10-12 above and wrongly held that the reliance placed by the applicants on the decision of the Bombay High Court in the case of Uttam Steel Ltd Vs. UOI 2003 (158) ELT 274 (Bom.) was distinguishable without elaborating as to how the same is distinguishable form the present case. The Commissioner (Appeals) therefore, gravely erred in upholding the impugned order passed by the Assistant Commissioner and rejecting the appeal filed by the applicants.

4.3 The applicants beg to submit that the rebate claims are not hit by the limitation of time bar as the provisions of section 11B of Central Excise Act, 1944 are required to be applied as procedural law and not as mandatory. The Assistant Commissioner and the Commissioner (Appeals) have not gone in to the entire decision of Hon'ble Bombay High Court that section 11B of Central Excise Act, 1944 is a procedural law and has gravely erred in holding that the circumstances of this case were entirely different than the present and that the said case deals with a

case where the claim was within the amended period of limitation. In this connection, the applicants also rely and refer to the observations of Hon'ble Supreme Court in the case of Mangalore Chemicals & Fertilizers Ltd. Vs Deputy Commissioner of Commercial Taxes & Others, 1991 (55) ELT 437 (SC) that there are conditions and conditions. Some are substantive, mandatory and based on considerations of policy and some other may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were intended to serve. There has to be distinction between what is a matter of form and one of substances.

5. Personal hearing was scheduled in this case on 26-06-2013 and 07-08-13. Shri S.K.Babaladi, Consultant attended hearing on 07-08-2013 on behalf of the applicant who reiterated the grounds of Revision Application. Shri J.N. Shinha, Superintendent, Central Excise, Bhyaner, Distt. Thane-II attended hearing on behalf of respondent department who requested to uphold the impugned Order-in-Appeal.

6. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

7. In this case applicant filed rebate claim on 26-07-2007 in r/o goods exported on 26-03-2006 vide ARE-I No. 343 dated 26-03-2006. As such the claim filed after time limit of one year as stipulated under section 11B of Central Excise Act, 1944 r/w Rule 18 of Central Excise Rules, 2002 was rejected as time barred by the Original authority. Commissioner (Appeals) upheld the said order. Now applicant has filed this revision application on the grounds stated 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.

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. Since there is no provision for condonation of any delay under Section 11B, the rebate claim filed after one year has to be treated as time barred and cannot be entertained.

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

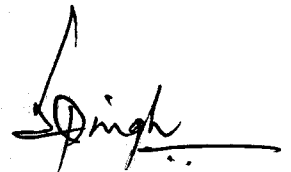
be filed for the sanctioning of a rebate claim is, inter alia, a self-attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise rules, 2002 there are two types of rebates: (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on 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 applications are thus rejected in terms of above.

13. So ordered.

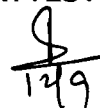


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s. Jyoti Steel Industries,
13, Mira Co-op. Indl. Estate,
Opp. Amar Palace Hotel, Mira,
Dist: Thane.

ATTESTED



Order No. 1249 /13-CX dated 12-9-2013

Copy to:

1. The Commissioner of Central Excise. Commissionerate, Thane-II, Navprabhat Chambers, 3rd Floor, Ranade Road, Dadar (West), Mumbai-400028.
2. The Commissioner of Central Excise (Appeals) Mumbai Meher Building, Dadiseth Agyari Lane, Chowpatty, Mumbai-400007.
3. The Assistant Commissioner of Central Excise, Bhayander Division, Thane-II, 1st Floor, Room no. 63, Devine Sheraton plaza, Jesal Park, Bhayander (East), Dist- Thane.
4. Shri S.K.Babaladi, Consultant and Shri J.N. Shinha, Superintendent c/o M/s. Jyoti Steel Industries, 13, Mira Co-op. Indl. Estate, Opp. Amar Palace Hotel, Mira, Dist: Thane.

✓ 5. PS to JS(RA)

6. Guard File.

7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)

