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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue... 10/9/13

ORDER NO. 125713-Cx DATED 13.09.2013 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.PKS/90/BEL/11 dated 9.8.2011 passed by Commissioner of Central Excise (Appeals) Mumbai-III, Mumbai Zone-II, Mumbai.
APPLICANT	:	M/s Standard Greases & Specialties Pvt. Ltd., Mumbai
RESPONDENT	:	Commissioner of Central Excise, Mumbai-III Commissoinerate

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ORDER

This revision application is filed by M/s Standard Greases & Specialties Pvt. Ltd., Mumbai against the order-in-appeal No.PKS/90/BEL/11 dated 9.8.2011 passed by Commissioner of Central Excise (Appeals) Mumbai-III, Mumbai Zone-II Mumbai.

2. Brief facts of the case are that the applicants have exported lubricating oil of various grades under ARE-1s, as mentioned in the second paragraphs of the order-in-original. The applicants have filed four rebate claims, three on 17.09.2010 and one on 28.07.2010. In case of rebate claims filed on 17.09.2010, it is found that the exports under relevant ARE-1s have been made in April-May 2009. As such, these rebate claims were filed beyond period of one year from the date of exportation. Similarly, the last claim i.e. 801/28.07.2010, the date of exportation have been indicated as 21.7.2009. Since the rebate claims have been filed after more than one year, the rebate sanctioning authority has held the same as time barred and has rejected the same vide the impugned order.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) on the following grounds :-

a) The export consignment against ARE-1 No. 22 & 23 was cleared on 13.7.2009 and the shipment has taken place on 21.07.2009. The excise duty involved in the rebate claim is of Rs.2,93,083/-.

b) The applicants have filed the rebate claims with the jurisdictional Central Excise Authorities on 02.07.2010 under the provisions of Section 11B of the Central Excise Act, 1944. However, since the original & duplicate copies of ARE-1 were misplaced, the same could not be submitted along with the rebate claims. The Assistant Commissioner has returned the said rebate claims vide letter dated 12.07.2010 for submission of original and duplicate copy of ARE-1 and other documents.

c) The application for rebate claim was filed in time limit in case of rebate claims against ARE-1 No.22 & 23 on 02.07.2010.

d) The rebate sanctioning authority has ignored the fact that the photocopies of the documents submitted with the rebate application itself provide that the duty has been paid on the export consignment and endorsement of Customs Authorities.

e) The rebate claims is valid & within time limit even if it is not accompanied by the supporting documents and in this regard reliance was placed on the case law of TVS Suzuki Ltd. vs. CCE reported in 2004(165)ELT 192 (CESTAT).

(f) As regards to the rebate claim in respect of ARE-1 No. 03/09-10 to 08/09-10 dated 21.04.2009, 11/09-10 dated 21.05.2009 and 12/09-10 dated 26.05.2009, the excisable goods were exported and proof of exports have been submitted along with the application of rebate claim. Though these applications were not filed within time limit, rebate claim can be admitted and granted if shipment of export consignment has taken place out of territory of India.

After considering all the submissions, Commissioner (Appeals) 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 Central Government on the following grounds :

4.1 Application for rebate claim was filed in time limit in case of export of excisable goods against ARE-1 No. 22 & 23 which took place on 21.07.2009 and application for rebate claim was filed on 02.07.2010, which was very well within the time limit under the provisions of Section 11B of the Central Excise Act, 1944. The Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II erred in understanding the fact that though certain documents were submitted subsequently, the application was made within time limit as per the provisions of Central Excise Act, 1944. The photocopies of the documents submitted with the Rebate Application itself proved that duty has been

paid on the exported goods and endorsement of customs authorities, mate receipts proved beyond the doubt that the excisable goods have in fact been exported.

4.2 The applicant submit that though the supporting documents i.e. ARE-1 copies as proof of export are to be accompanied with the claim of rebate as per the provisions of section 11B of Central Excise Act, 1944, claim of rebate is valid & within time limit even if it is not accompanied by the supporting documents, the applicant relies on the judgment passed in the case of TVS Suzuki Ltd. vs. CCE 2004 (165) ELT 192 (CESTAT). The lower authority failed to understand that though original ARE-1 form is not produced, rebate claim is admissible on the basis of other documentary evidence i.e. shipping bill, bill of lading etc. The applicant relied on the judgment passed in the caseof Hebekraft in re 2001 (136) ELT 979 (GOI) and Kansal Knitwears vs. CCE 2001 (136) ELT 467 (CEGAT).

In view of the above, it is crystal clear that claim for rebate of duty were filed in time limit, on 02.07.2010 i.e. within one year from the date of shipment of export consignment and claim re-submitted on 27.07.2011 was mere continuation in compliance of requirements of the authorities and cannot be treated as fresh submission of the claim of rebate as has been understood by the Appellate Authority and the fact of on enclosing original ARE-1 with rebate application cannot be the ground for rejection of rebate claim.

4.3 The applicant submit that as far as rebate claim applications in regard to ARE-1 No.03/09-10 to 08/09-10 dated 21.04.2009, 11/09-10 dated 21.05.2009 and 12/09-10 dated 26.05.2009 is concerned, the excisable goods have in fact been exported and proof of exports have been submitted along with the application of rebate claim. The Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II erred in understanding the provisions of Rule 12 of the Central Excise Rule 1944, there was a provisions that "if the Commissioner of Central Excise or as the case may be Maritime Commissioner of Central Excise is satisfied that goods have in fact exported, he may,

for reasons to be recorded in writing, allow, the whole or any of the conditions laid down in any notification issued under this rule have not been complied with."

Rule 12 of Central Excise Rules, 1944 which was relating to export under rebate, is replaced by rule 18 of the Central Excise Rules, 2002, with the similar parameters. In other words, carrying with the same intention of legislature to grant benefit of rebate on export of excisable goods.

5. Personal hearing scheduled in this case on 7.8.2013 was attended by Shri D.W. Deshpande, 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, Government observes that claims in respect of ARE-1 No. 22 and 23 both dated 13.07.2009 for Rs.2,93,083/- are claimed to have been filed on 2.7.2010 whereas goods were exported on 21.07.2009 but the same were rejected as time barred by original authority. Inf act in this case applicant had not filed original and duplicate ARE-1 form alongwith rebate claim and therefor it was returned to applicant who again resubmitted it on 27.07.2011. Applicant claimed that said claim initially filed on 2.7.2010 was well within one year's time limit. Further, it is also contended that in this case duty paid goods have been exported and these rebate claims cannot be denied for non-submission of original and duplicate copies of ARE-1 form. Government notes that original and duplicate ARE-1 forms contain the certification about export of said duty paid goods mentioned in ARE-1 from the Central Excise & Customs authorities. Applicant has not submitted mate receipt in one case and quantity mentioned in other mate receipt does not match with ARE-1 quantity. As such the export of said goods was not proved to the satisfaction of rebate sanctioning authority who has therefore rightly rejected the said claims.

8. The rebate claims in respect of ARE No. 3/09-10 to 8/09-10 dated 21.04.2009, 11/09-10 dated 21.05.2009 were filed after lapse of one year on 17.09.2010. As such they were rejected as time barred. Applicant has contended that as per provision of Rule 12 of erstwhile Central Excise Rules 1944, Commissioner of Central Excise was empowered to allow rebate claim even if any of the condition of Notification relating to rebate claim was not complied with and therefore in the light of said provision the delay in filing rebate claim may be condoned in terms of Rule 18 of Central Excise Rules 2002. Government notes that there is no such provision in the rule 18 and the provisions of rule 12 of Central Excise Rules 1944 are not applicable to the instant case. As such this argument is not acceptable.

8.1 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.

8.2 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 and it is mandatory to comply with the same. The statutory requirement can be condoned only if there is such provision under Section 11B. Since there is no provision for condonation of delay in terms of Section 11B, the rebate claim filed after one year has to be treated as time barred.

9. 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 :-

9.1 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 clam 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 ?"

9.2 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."

9.3 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.

9.4 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.

9.5 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 din 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."

10. 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 Central Excise Rules, 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.

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

12. So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

M/s Standard Greases & Specialties Pvt. Ltd.,
Plot No. C-60, TTC MIDC Area,
Turbhe Village,
Navi Mumbai- 400 613

Attested
(भगवान शर्मा/Bhagwan Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (वित्त विभाग)
Ministry of Finance (Dept. of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

Order No./255/13-Cx dated 13.09.2013

Copy to:

1. Commissioner of Central Excise, Mumbai-III Commissionerate, 4th Floor, Vardan Trade Sankul, MIDC, Wagle Industrial Estate, Thane (West) – 400 604
2. Commissioner of Central Excise (Appeals), Mumbai-III, 5th Floor, CGO Complex, CBD Belapur , Navi Mumbai – 400 614
3. The Assisant Commissioner of Central Excise, Belapur-II Division, 3rd Floor, CGO Complex, CBD Belapur , Navi Mumbai – 400 614
4. PA to JS(RA)
5. Guard File.
6. Spare Copy

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