

REGISTERED
SPEED POST



F.No. 195/793/11-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...17/11/11

ORDER NO. 1256 2013-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 order-in-appeal No.US/157/RGD/2011 dated 31.8.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II

Applicant : M/s Polydrug Laboratories (P) Ltd., Sewri (West), Mumbai.

Respondent : The Commissioner of Central Excise, Mumbai-II

ORDER

This Revision application is filed by the applicants, M/s Polydrug Laboratories (P) Ltd., A-201-202, Navbharat Estate, Zakari Bunder Road, Sewri (West), Mumbai against the order-in-appeal No.US/157/RGD/2011 dated 31.8.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to order-in-original No. 1143/10-11/Ack(Rebate)/Raigad dated 19.10.2010 passed by Assistant Commissioner (Rebate), Central Excise, Raigad.

2. Brief facts of the case are that the applicants, M/s Polydrug Laboratories (P) Ltd., A-201-202, Navbharat Estate, Zakari Bunder Road, Sewri (W), Mumbai-400015 have filed the rebate claims under the provisions of Rule 18 of Central Excise Rules 2002 read with Notification No.19/2004-CE(NT) dated 6.9.2004.

On preliminary verification it was seen that the goods were shipped within the period as stipulated under Notification No.19/2004-CE(NT) dated 6.9.2004 as seen from the Mate receipt as well as from the endorsement made on the original and duplicate copies of ARE-1s. However, claims for rebate have been lodged well after the stipulated period prescribed under Section 11B read with Rule 18 of the Central Excise Rules 2002. In view of this a Deficiency Memo-cum-SCN was issued vide F.No.V/15/Reb/Poly Drug/RGD/2010/13015 dated 30.9.2010. The applicant informed that the claims were first filed with jurisdictional excise authority but they have wrongly returned the claims under the pretext that goods are not exported from the Mulund CFS; that jurisdictional excise authority vide letter F.No.RC/894&895/9-10 dated 30.3.2010 has clearly acknowledged that the subject claims were filed with their office as early as 10.2.2010; that they informed that the purpose of issuance of this letter is just to establish that the claim should not be treated as time barred. They further claimed that they were a victim that the claim was not settled by the jurisdictional excise authority and they were wrongly directed to submit the claim to Maritime Commissioner, Raigad. The goods were exported on 1.3.09 and 29.3.09, which means that the rebate claims had to be

filed by 28.2.10 & 28.3.10, with the Maritime Commissioner, Raigad as the goods were exported from JNPT, Nhava Sheva. The applicant had filed the rebate claims on 14.5.2010 to the Maritime Commissioner, Raigad which was beyond one year from the date of exportation. The adjudicating authority adjudicated the case as time barred and rejected the rebate claims vide his order-in-original dated 19.10.2010.

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

4. Being aggrieved by 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 There is no dispute about this fact that the claims in the first instance were filed within the time limit of one year but they were filed with the Maritime Commissioner, Mumbai-III instead of Maritime Commissioner, Raigad, which was the correct jurisdictional authority for the grant of rebate. This fact has been very clearly acknowledged in the order-in-original also. Paragraphs 3 & 9 of the order-in-original clearly acknowledge this fact. Not only this, we specifically invite reference of the Revisionary authority to the fact that the office of the Maritime Commissioner, Mumbai-III issued letter to the effect that in the first instance the claims were submitted to their office wrongly but the claims need to be submitted to the Maritime Commissioner of Central Excise, Raigad. Not only this, a copy of the communication was marked to the Maritime Commissioner of Central Excise, Raigad so that the claim is not jeopardized due to limitation clause.

4.2 Therefore the short point in the case is that whether the claim filed in the first instance with the Maritime Commissioner, Mumbai-III needs to be considered for the filing of the claim within the time limit. The date of rebate claim will be reckoned to be the date on which the claim was presented to the authority in the first instance. The

facts of the case, duly accepted by the Assistant Commissioner of Central Excise, Raigad establish beyond doubt that goods were duty paid & the goods have been exported & the claim was filed within the limitation period of 1 year in the first instance but with a wrong office of the Central Excise department therefore the rebate needs to be sanctioned. The filing of the rebate claim with the particular office of the Central Excise is simply a procedural requirement for administrative convenience. Therefore, condonation thereof was within the authority of the Assistant Commissioner & that discretion should have been exercised. Not only this, there are several other decisions where this principle that substantive compliance should entitle the exporter to rebate has been accepted by the revisionary authority of the Government of India. It is pertinent to point out here that nobody will file claim with the wrong authority on purpose so as to lose the claim. Therefore, filing of claim with the wrong authority needs to be condoned as it is a procedural lapse only.

4.3 In review, order of the original authority was not found to be defective except for the lack of jurisdiction. The lower appellate authority has waived the statutory requirement of filing the rebate claim within the time limit prescribed under Section 11 B before the competent authority. As the rebate claim was found to be in order in review except for the jurisdictional aspect, it is not necessary for the applicant to approach the jurisdictional Assistant Commissioner of TAL to undertake the same exercise which is of no material consequence. A different Assistant Commissioner sanctioning the refund claim involves only an administrative adjustment of funds disbursed as rebate for statistical purposes. Thus if the Maritime Commissioner of Central Excise, Mumbai-III would not have detected the wrong & settled the claim then the same would have been upheld because a different Assistant Commissioner sanctioning the refund claim involves only an administrative adjustment of funds disbursed as rebate for statistical purposes. However, here, in this case, the original authority to which the Rebate claim was submitted, did not sanction the rebate to the merchant exporter but directed to file the claim with the Maritime Commissioner, Raigad. Therefore, the date of filing the claim with the first authority is valid to

determine whether the claim was filed in time Thus there is only an administrative procedure lapse, which needs to be condoned if the claim is first filed with a different authority. Not only this, the Tribunal order also states categorically that "The lower appellate authority has waived the statutory requirement of filing the rebate claim within the time limit prescribed under Section 11B before the competent authority". Therefore it is crystal clear from the said decision that if the rebate claim is filed before the wrong official then under these circumstances, lower appellate authority has authority to waive the statutory requirement of filing the rebate claim within the time limit prescribed under Section 11B before the competent authority within the time limit. The reason being simple that claim is filed within the prescribed time limit & the procedural requirements can be relaxed & rebate sanctioned as provided for in the notification.

4.4 The Commissioner (Appeals) has ignored the decision of the Tribunal without assigning any reason though the same is relevant. The pertinent point to note is that the appellate authority has waived the statutory requirement of filing the rebate claim within the time limit prescribed under Section 11B before the competent authority. Here in this case, the claim was filed with the Maritime Commissioner, Mumbai-III, which was not the correct authority but the claim was filed within the limitation period of 1 year therefore as per the ratio of decision in the case of Tafe Limited supra, the statutory requirement of filing the rebate claim within the time limit prescribed under Section 11B before the competent authority should be relaxed & rebate sanctioned. Thus in terms of the judicial pronouncement, it is imperative that the rebate should be sanctioned. The Commissioner (Appeals) has failed to take cognizance of this case law & ignored the same completely.

5. Personal hearing scheduled in this case on 8.8.2013 was attended by Shri Rajiv Gupta, Consultant and Shri Vijay Billawa, Manager 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 applicant had initially filed the rebate claim on 10.2.2010 in Central Excise Commissionerate Mumbai-III who returned the said claim to applicant vide letter F.No.RC/894&895/09-10 dated 30.3.10 on the ground that for goods exported from JNPT Nhava Sheva the proper rebate sanctioning authority is Maritime Commissioner, Raigarh. Applicant thereafter filed claim with Maritime Commissioner, Raigarh on 14.5.10 for the goods exported on 1.3.09 and 29.3.09. The adjudicating authority treated the said claim as filed after one year and rejected being time barred in terms of Section 11B of Central Excise Act 1944. Commissioner (Appeals) has upheld the said order. Now applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that department has not disputed the fact that rebate claim was initially filed on 10.2.10 with Maritime Commissioner, Central Excise Mumbai-III. There are catena of judgments wherein it has been held that time limit to be computed from the date on which refund/rebate claim was originally filed. High Court and CESTA Tribunal, have held in following cases that original refund/rebate claim filed within prescribed time limit laid down in section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur Vs. Bhandiguri Tea Estate 2001(134) ELT 116 (T. Kol.)
- (iv) Good Year India Ltd. Vs.CCE Delhi 2002 (150) ELT 331 (T.Del)
- (v) CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

Government of India has also held in a case of M/s IOC Ltd. reported as 2007(220) ELT 609 (GOI) as under:-


"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."

In view of above, the said rebate claim cannot be treated as time barred since it was originally filed before department on 10.2.10 which was well within the limit period of one year stipulated in section 11B of Central Excise Act, 1944. Government is of considered view that case is required to be remanded back for denovo consideration.

9. In view of above circumstances, Government sets aside the impugned orders and remands the case back to original authority to decide the case on merits in accordance with law taking into account the above observations. A reasonable opportunity of hearing will be afforded to the parties concerned.

10. Revision Application is disposed off in above term.

11. So, ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s Polydrug Laboratories (P) Ltd.,
A-201-202, Navbharat Estate,
Zakari Bunder Road, Sewri (W),
Mumbai-400015

Attord'



(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.)
भारत सरकार/Govt of India
नई दिल्ली / NEW DELHI

G.O.I. Order No. 1256 /13-Cx dated 13.09.2013

Copy to:-

1. The Commissioner, Central Excise, Mumbai Zone-II, C-24, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai 400051.
2. The Commissioner of Central Excise (Appeals), Mumbai-II, 3rd Floor, Utpad Shulk Bhavan, Plot No.C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai 400051.
3. The Assistant Commissioner of Central Excise (Rebate), Kendriya Utpad Shulk Bhavan, Ground Floor, Plot No.1, Sector-17, Khandeshwar, Navi Mumbai 410206
4. PS to JS (Revision Application)
5. Guard File
6. Spare Copy.

(Attested)



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