

Speed Post
Registered

F.No.195/1143/11-RA-Cx
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue...12/9/13

Order No. 1264 / 2013-CX dated 17.09.13 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 Orders-in-Appeal No. 296/11(Ahd-II)CE/CMC/Commr.(A)/Ahd. dated 28-06-2011 passed by Commissioner of Central Excise (Appeals), Ahmedabad-I

Applicant : M/s Pasupati Industries., Ahmedabad

Respondent : Commissioner of Central Excise, Ahmedabad-II

ORDER

This revision applications is filed by the applicant M/s Pasupati Industries., Ahmedabad against orders-in-appeal No. 296/11(Ahd-II)CE/CMC/Commr.(A)/Ahd dated 28-06-2011 passed by the Commissioner of Central Excise (Appeals), Ahmedabad-I with respect to Orders-in-Original passed by the Asstt. Commissioner (Rebate), Central Excise, Ahmedabad-I.

2. Brief facts of the case are that the applicant filed rebate claims for Rs. 1,07,120/- on 28-12-2010 under Rule 18 of Central Excise Rules, 2002 read with Notification 19/2004-CE dated 06/09-2004. The applicant had cleared the goods for export on 22-09-2009, which were finally exported on 30-09-09. Thus the rebate claim was filed after one year. The applicant vide letter dated 27-12-2010 submitted a certificate from the office of the Assistant Commissioner of Customs, I.C.D., Sabarmati, Ahmedabad to the effect that the goods in question were exported vide Shipping Bill No. 1394359 dated 22-09-09 under DEPB Scheme. The Shipping Bill was released on 08-12-2010. The respondent had submitted a copy of OIA No. 141/2003(141-A-II)CE/Commr.(A-II) dated 07-07-2003, in which commissioner (Appeals) had found that the delay in filing rebate claim is not on the part of the appellants in as much as it is on the part of the department itself. The adjudicating authority sanctioned the rebate claim. The adjudicating authority interalia observed that goods were exported within six months from the date of there clearance from the factory; that the original and duplicate copy of ARE-1 bears the customs endorsement to effect that the goods have been exported, that the triplicate copy of ARE1 is duly signed by the Range Superintendent evidencing payment of duty; that the claim has been filed within the time limit prescribed under section 11B of the Central Excise Act/1944; that the aspect of unjust enrichment does not arise; that the rebate claim have been verified with the Shipping Bill; that the goods have been exported after debiting the duty along with Cess.

3. Being aggrieved by the said order-in-original Department filed appeal before Commissioner (Appeals) who held that said rebate claim filed after one year was time barred and cannot be sanctioned. The impugned order-in-original was set aside while allowing departmental appeal.

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 The Applicant most respectfully submits that there is no dispute about actual export of goods on which duty has been paid. The letter dated 08-12-2010 of Assistant Commissioner of Customs, ICD Sabarmati, Ahmedabad is an evidence that due to want of test report the ARE-1 No. Exp.32 dated 08-12-10 was not released at that time. It is also stated that the shipping bill is yet to be finalized. From this it is evident that the export permitted provisionally has not been yet finalized till date. Therefore, as per the provisions u/s 11B of the Act the relevant date is the date of which assessment / exports are finalized. Since the documents returned by the customs officer to the applicant, under letter dated 08-12-2010, the claim shall have to be considered as filed within a stipulated period U/S 11B of the Act. It is further submitted that the views taken by the learned commissioner (Appeals) that the instructions contained in the manual in para 2.4 of Ch. 9 of supplementary instructions on Central Excise Manual that it is related to interest liability by the Department on delayed payment of refund claim. This is not proper correct and legal. In fact the instructions are every clear that every claimant shall have to file a refund claim completely with all the relevant documents. In case if relevant documents are not accompanied with the claim the same is to be returned to the claimant and can be entertained only after receipt of claim completely with the required documents. In that case the liability to pay the interest to be considered from the date of receipt of claim completely, it is also further clarified that in case of any documents not available for which the Central Excise or customs Department is solely accountable, the claim may be received so that the claimant is not

hit by limitation period. From this it is as clear as day light that no claimant can file the claim without documents which are in the custody of the Department. In the present case it is undisputed fact that all the relevant documents required for filing the claim were in the custody with the customs officers till 08-12-10.

4.2 It is also undisputed fact that all the documents are returned by the customs officer on 08-12-10. Therefore, the claim filed on 28-12-10 shall have to be considered as within time. The delay in filing the claim is only because of fault on the part of the customs officers. Therefore as per instructions in para 2.4 of Ch.9 the claim is not hit by limitation period. The impugned order denying the rebate claim on the grounds of limitation is apparently incorrect, illegal and contrary to the instructions issued by the Board.

5. Personal hearing scheduled in this case on 07-08-13 at Mumbai was attended by Shri M.A. Patel, Consultant on behalf of the applicant who reiterated the grounds of revision application.

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

7. On perusal of records, Government notes the said goods were exported on 30-09-2009 and the rebate claim of duty paid thereon was filed on 28-12-10. Since the claim was filed after one year's time limit as stipulated in section 11B of CEA 1944, the said claim being hit by time limitation was held inadmissible by Commissioner (Appeals). Now in this revision application, applicant has mainly contended that export goods were provisionally assessed and customs released the copy of Shipping Bill on 08-12-10, that the claim filed on 28-12-10 has to be treated as filed in time since the limit was to be computed from the date release of documents by customs and also from the date of finalization of assessment.

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. 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.

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 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.

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:-

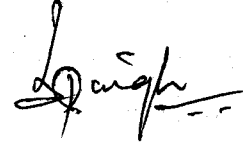
"11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central 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 Central Excise Rules 2002 is clearly hit by time limitation clause and cannot be entertained at all. As such it is rightly held inadmissible by Commissioner (appeals) being time barred. Government do not find any infirmity in the impugned order-in-appeal and therefore, upholds the same.

12. The revision application is thus rejected in terms of above.

13. So ordered.



(D. P. Singh)

Joint Secretary (Revision Application)

M/s Pasupati Industries.,
169/1/A, GIDC, Phase-I,
Opp: Telephone Exchange,
Naroda, Ahmedabad-380 009.


(Attested)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revy)
भारत सरकार/Govt. of India
नई दिल्ली/NEW DELHI

GOI Order No. 1264 /13-CX dated 17.09.2013

Copy to:

1. The Commissioner of Central Excise, Ahmedabad-II, Custom House, Navrangpura, Ahmedabad-380 009.
2. The Commissioner of Central Excise & Customs (Appeals-I), Central Excise, 7th Floor, Central Excise Building, Ambawadi, Ahmedabad- 380 015.
3. Shri. M.A. Patel, Excise Consultant, Nirma House, Ashram Road, Ahmedabad-380 009.
4. Guard File.
5. PS to JS (RA)
6. Spare Copy


17/9
(B.P. Sharma)
OSD (Revision Application)