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F.No.195/1108/11-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.....25/9/13

Order No. 1280 /2013-CX dated 24.09.2013 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 Orders-in-Appeal No.US/199/RGD/2011 dated 17-08-2011 passed by Commissioner of Central Excise (Appeals-II), Mumbai.

Applicant : M/s L'amar Exports Pvt. Ltd., Mumbai.

Respondent : Commissioner of Central Excise, Raigad

ORDER

This revision application is filed by the applicant M/s L'amar Exports Pvt. Ltd. against orders-in-appeal No. US/199/RGD/11 dated 17-08-2011 passed by the Commissioner of Central Excise (Appeals-II), Mumbai with respect to Orders-in-Original No. 865-A/10-11/AC/Rebate/ Raigad dated 31-08-10 passed by the Asstt. Commissioner, Rebate, Central Excise, Raigad

2. Brief facts of the case are M/s L'amar Exports Pvt. Ltd. Exporter, is situated at 107, Anand Estate, JMCICE & Cold Storage, Sane Guruji Marg, Mumbai-400 11 (herein after referred to as 'the claimant') a merchant exporter had procured excisable goods from various manufacturers. The claimant exported so procured from various manufactures and filed three rebate claims, for Rs. 48,836/-, 37,767/- and 73,767/-.

2.1 On scrutiny of the above 3 rebate claims it was noticed that R.C. No. 3907 dated. 13.05.2008 for Rs. 48,836/- was filed after e period of one year from the date of sailing of vessels. As per the provisions of Section 11 B of Central Excise Act 1944 rebate of claim should be filed within year form the relevant date. The relevant date is defined for various modes of transport such if the goods are exported by road then the relevant date is date on which goods crosses the boundaries of the country and if the goods are exported by sea then the relevant date is the date on which ship / vessel /steamer sails. In the present case the claimant had filed rebate claims on 13.05.2008 after a period of one year from the sailing of vessels i.e. 13.05.2007. Therefore, Show Cause Notice bearing F. No. V/15-/Reb/58/Lamar/Spl.Cell/Rgd/10 10489 dated 11.08.2010 was issued.

2.2 In respect of other two rebate claim No. R.C. No. 3908 & 3909 both dated 13.05.2008, goods were exported through CFS Mulund, Mumbai which was not falling under jurisdiction of ACCE Rebate, Raigad.

2.3 After following the due process of law, the original authority i.e. ACCE (Rebate) Raigad requested these three claims.

3. Being aggrieved by the said for order-in-original, applicant filed appeals before Commissioner (Appeals) who upheld the impugned order-in-original and rejected the 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 In this matter the mode of shipment earlier decided through JNPT, NhavaSheva. Therefore, we have addressed rebate Sanctioning authority as "The Maritime Commissioner, Raigad. But as per requirement of our overseas buyer we have exported said consignment through CFS Mulund instead of JNPT, Nhava Sheva.

4.2 As these goods have been exported through CFS Mulund we were suppose to submit the rebate claim with "the Maritime Commissioner, Mumbai - III. But as the ARE-1 addressed to The Maritime commissioner, Raigad due to oversight we had filled these two rebate claims at the Maritime Commissioner, Raigad. As the goods were not exported through JNPT, the Maritime Commissioner, Raigad has no authority to sanction rebate claims. The Maritime Commissioner, Mumbai-III is the concerned authority to sanction these claims.

4.3 Further, there is no revenue loss to the government of India and there is no any dispute regarding duty payment. Also goods are already exported out of India. Hence our rebate claim cannot be rejected on procedural / technical lapses.

4.4 In the interest of natural justice and fairness and also taking in to consideration all the above mentioned submission in the proper perspective, the rebate claim may please be sanctioned or return back to us with direction to file with concern authority (i.e. Maritime Commissioner, Mumbai -III).

In order to support contention to rely on following set of judgments:-

- i) Collector of C. Ex., Allahabad Vs. Ghosi Sahkari Kray -Vikray Prakriyatmak Samit, Azamgarh as reported in 1988 (34) E.L.T. 716 (Tribunal).

- ii) Commissioner of Central Excise, Ahmedabad Vs. Engineering Ltd., as reported in 2009 (248) E.L.T. 826 (Tri- Ahmd.)
 - iii) C.C.E., Ahmedabad Vs. Gujarat Tea Processors and Packers Ltd. as reported in 2010 (17) S.T.T. 489 (Tri – Ahmd.)
5. Personal hearing scheduled in this case on 07.08.2013 at Mumbai was attended by Ms.Geeta Ranjan, Account Manager and Shri Shridhar Iojapuri, Excise Executive on behalf of the applicant who reiterated the rounds 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 observes that applicant has not contested the rejection of one rebate claim No. 3907 dated 13.05.8 which was rejected as time barred. He has contested the rejection of other two rebate claims in this revision application on the ground that rebate claims were wrongly filed before Maritime Commissioner, Raigad instead of Maritime Commissioner Mumbai-III, since goods were exported through CFS Mulund, Mumbai, that rebate claim cannot be rejected for such procedural lapse when export of duty paid goods are not disputed, that Asstt. Commissioner (Rebate), Raigad may be directed either to sanction the claims or transfer the claims to the Maritime Commissioner, Mumbai-III.
8. Government notes that the said two rebate claims were required to be filed with proper rebate sanctioning authority i.e. Maritime Commissioner, Mumbai-III. The claims are filed in time with the Asstt. Commissioner, Central Excise (Rebate), Raigad by mistake. Applicant had requested the original authority to transfer the claims to Mumbai-III Commissionerate but the claims were rejected without giving any finding on applicant's request. In such a case, the original authority should have either transferred the claims to proper rebate sanctioning authority or returned the papers to the applicant in time.
9. 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."

10. In view of above position, the original authority is directed to transfer the said rebate claim to the Maritime Commissioner, Central Excise, Mumbai-III for consideration on merits of the case in accordance with law. The claims initially filed on 13-05-08 within time limit of one year are to be treated as filed in time in view of above said case laws. The Maritime Commissioner, Mumbai-III will afford reasonable opportunity of hearing to the parties. The impugned orders are modified to this extent.

11. Revision Application is disposed of in terms of above.

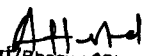
12. So ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s L;amar Exports Pvt. Ltd.,
107, Anand Estate,
JMC ICE & Cold Storage,
Sane Guruji Marg,
Mumbai - 400 011.

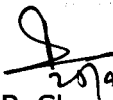

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

GOI Order No. 1280 /13-CX dated 24.09.2013

Copy to:-

1. The Commissioner of Central Excise (Maritime), Raigad, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410 206.
2. The Commissioner of Central Excise (Appeals-II) Mumbai, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector-E, Bandra-Kurla Complex, Bandra (East), Mumbai – 400 051.
3. The Assistant Commissioner (Rebate), Central Excise, Raigad, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai-410 206.
- ✓ 4. P.S. to J.S. (R.A.)
5. Guard File
6. Spare Copy

Attested


(B.P. Sharma)
OSD (R.A.)