



REGISTERED
SPEED POST

F.No.195/221/2011-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... 28/10/13

ORDER NO. 1331/13-Cx DATED 22.10.2013 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. AKP/NSK/171/2011 dated 25.08.2011 passed by
Commissioner of Customs & Central Excise (Appeals)
Nashik

APPLICANT

: M/s EPCOS India Pvt. Ltd., Film Capacitor Division,
MIDC Satpur Nashik

RESPONDENT

: Commissioner of Central Excise, Nashik

ORDER

This revision application is filed by M/s EPCOS India Pvt. Ltd., Film Capacitor Division, MIDC Satpur Nashik against the order-in-appeal No. AKP/NSK/171/2011 dated 25.08.2011 passed by Commissioner of Customs & Central Excise (Appeals) Nashik with respect to order-in-original No. 674/Rebate/2011 dated 29.04.2011 passed by Deputy Commissioner of Customs & Central Excise, Nashik-I Division, Nashik.

2. Brief facts of the case are that the applicants are holding Central Excise registration certificate for manufacture of excisable goods. For the goods exported on payment of duty, the applicant filed the rebate claim for Rs.4,00,12,840/-. It was observed that Education Cess and Secondary & Higher Education Cess amounting to Rs.10,70,460/- was paid/debited through Cenvat Credit under the head of Basic Excise duty and such payment was not permissible under sub-rule 7(b) of Rule 3 of Cenvat Credit Rules, 2004. Hence, vide order-in-original No. Rebate/30/08 dated 29.01.2008, Assistant Commissioner, Central Excise, Nashik-I rejected refund of Rs.10,70,460/- and sanctioned remaining amount of Rs.3,89,42,380/-. Aggrieved with said order-in-original, the applicant preferred appeal with Commissioner (Appeals), Central Excise, Nashik who vide order-in-appeal No. CEX/AKD/55/APL/ NSK/2008 dated 05.03.2008 allowed the appeal and set aside the portion of order-in-original rejecting refund of Education Cess and Secondary & Higher Secondary Education Cess. Aggrieved with above order-in-appeal, the department filed revision application to the Joint Secretary, Ministry of Finance, New Delhi who vide order No. 1703/10-Cx dated 23.11.2010 dismissed the revision application on the ground that the same is time barred as order-in-appeal was received by the department on 07.03.2008 and revision application was filed vide letter dated 16.10.2008, which was received on 22.10.2008, whereas the revision application is required to be filed within 3 months. The revision application was found to have been filed even after expiry of further 3 months, which is maximum

condonable limit after normal period of 3 months within which the revision application ought to have been filed. In view of this, Deputy Commissioner, Central Excise, Nashik-I Division sanctioned the refund claim of Rs.10,70,460/-.

3. Being aggrieved by the said order-in-original dated 29.04.2011, applicant filed appeal before Commissioner (Appeals) on the ground that original authority did not grant interest under section 11BB of Central Excise Act, 1944 w.e.f. 04.06.2008. After considering the submissions, Commissioner (Appeals) held the original authority has not passed any order on interest and therefore rejected the appeal and directed original authority to pass suitable order on the interest claim of party.

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 In the impugned order-in-appeal, Commissioner (Appeals) neither commented on the main issue for which appeal was filed by the applicant nor given his findings on the interest applicable under section 11BB of Central Excise Act, 1944. In the said order-in-appeal, Commissioner (Appeals) has only commented on the order-in-original passed by the Deputy Commissioner, Nashik and remand the matter back to the adjudicating authority to consider the claim of interest. Since, the Commissioner (Appeals) has not commented on the main issue involved in this appeal, order-in-appeal passed by the Commissioner (Appeals) is non-speaking order and it needs to be set aside on this ground alone.

4.2 The main issues involved the present matter is :

(i) Whether the Commissioner (Appeals) has power to remand the matter?

(ii) Whether interest is payable on the delayed payment of rebate claim?

4.3 Applicant states and submits that Commissioner (Appeals) has remanded the matter back to the adjudicating authority to consider the interest claim made by the

applicant. Applicant submits that Commissioner (Appeals) has no power to remand back the matter to the adjudicating authority in accordance with the amendment made in Section 35A of the Central Excise Act, 1944. Hence order-in-appeal is improper and needs to be set aside on this ground alone.

4.4 In terms of Section 11BB of the Central Excise Act, 1944, if any duty ordered to be refunded under Section 11B(2) to any applicant is not refunded within 3 months from the date of application filed under Section 11B(1), interest at specified rate on such duty shall be paid to the applicant, from the date immediately after the expiry of 3 months from the date of receipt of such application till the date of refund of such duty. Thus effectively for the period of delay of more than 3 months from the date of filing of refund application till the date of actual sanction of the refund, interest is payable to the applicant.

4.5 As per the provisions of Section 11BB if the amount of refund payable under the provisions of Section 11B is not refunded to the applicant within three months from the date of receipt of application the interest is payable. Applicant relies on the following decided case by the Hon'ble Supreme Court in the matter of Ranbaxy Laboratories Limited vs. Union of India reported in 2011 (273) ELT 3 (SC).

5. Personal hearing was scheduled in this case on 7.8.2013 and 19.09.2013. Nobody attended hearing on any of these dates. As such, case is taken up for decision on the basis of available records.

6. Government has carefully gone through the relevant case records, oral & written submissions and perused the impugned orders-in-original and orders-in-appeal.

7. On perusal of records, Government observes that in the instant case, original authority has allowed rebate of Rs.10,70,460/- in compliance to Commissioner (Appeals) order-in-appeal No. CEX/AKD/55/APL/NSK/08 dated 05.03.2008 but did not

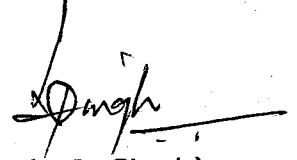
pass any order on interest on delayed payment of rebate claim under section 11BB of Central Excise Act, 1944. Commissioner (Appeals) has rejected the appeal of party on the ground that there was no order of original authority on their interest claim and directed Assistant Commissioner of Central Excise to pass suitable order. Now applicant has filed this revision application on the ground that Commissioner (Appeals) has no remand power and did not pass any order on their claim and as per section 11BB of Central Excise Act 1944 they are entitled for interest on delayed payment of rebate claim from the date of expiry of 3 months from the date of filing rebate claims.

8. Government notes that original authority has not passed any other on the issue of payment of interest under section 11BB. Applicant should have first approach AC/DC of Central Excise for passing speaking order on their interest claim rather than filing appeal. Commissioner (Appeals) has rejected the appeal being infructuous/unwarranted and non-maintainable. So it cannot be treated as remand order. However, Government is of the view that original authority is required to consider the applicant's interest claim under section 11BB and pass suitable order in accordance with law. In the absence of any order from original authority issue cannot be agitated before Appellate Authority

9. In view of above position, Government sets aside the impugned order-in-appeal and remands the case back to original authority for fresh consideration of matter in accordance with law. Applicant may file their written submissions before original authority. A reasonable opportunity of hearing will be afforded to the parties.

10. The revision application is disposed off in terms of above.

11. So, ordered.



(D.P. Singh)

Joint Secretary(Revision Application)

M/s EPCOS India Pvt. Ltd.,
Film Capacitor Division,
E-22-25, MIDC Satpur,
Nashik - 422007

Attested



(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

Order No. 133/13-Cx dated 22.10.2013


Copy to:

1. Commissioner of Customs & Central Excise, Nashik Commissionerate, Kendriya Rajaswa Bhavan, Gadkari Chowk, Nasik – 422 002.
2. Commissioner of Central Excise & Customs (Appeals), Kendriya Rajaswa Bhavan, Gadkari Chowk, Nasik – 422 002.
3. Deputy Commissioner of Central Excise, Nasik-I Division, Jande Park, Takli Road, Dwarka, Nashik – 422 011.

✓ 4. PA to JS(RA)

5. Guard File.

6. Spare Copy


23/10

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

