

REGISTERED  
SPEED POST



F.No. 195/1122/11-RA  
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. 28/10/13

Order No. 1337 / 2013-CX dated 25.10.2013 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 order-in-appeal No.RKA/255/SRT-I/2011 dated 19.08.11 passed by the Commissioner of Central Excise (Appeals), Surat-I.

Applicant : M/s Donear Industries Ltd., Surat

Respondent : Commissioner of Central Excise, Surat-I

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**ORDER**

This revision application is filed by M/s Donear Industries Ltd., Surat against order-in-appeal No.RKA/255/SRT-I/2011 dated 19.08.11 passed by the Commissioner (Appeals) of Central Excise, Surat-I with respect to order-in-original passed by the Assistant Commissioner of Central Excise, Division-II, Surat-I.

2. Brief facts of the case are that M/s. Donear Industries Ltd. (Unit Balaji Fabrics), Surat is engaged in the manufacture of excisable goods viz. Man Made Fabrics, falling under Chapter Heading No. 54 to the schedule of Central Excise Tariff Act, 1985. The applicant files Rebate claims vide R.C. No. 29395 & 29394 with the office of Maritime Commissioner, Central Excise, Raigad, with all the relevant documents on 19.01.2009 for Rs.2,62,102/- in respect of ARE-1 No.85/07-08 dated 10.03.2008 and for Rs.2,15,671/- in respect of ARE-1 No.86/07-08 dated 10.03.2008. Due to some software problem with the office of Maritime Commissioner, Raigad, they requested to withdraw the claims vide their letter dated 02.03.2009 and the same was returned vide department letter No.4357 dated 30.03.2009, along with all original documents which was some days later after the expiry of one year limitation period. Due to some software problem in the office of Maritime Commissioner, Raigad, applicant claim cannot be processed and after withdrawal of it, again the applicant had submitted said rebate claims to Jurisdictional Assistant Commissioner, Div-II, Surat on 01.05.2009, along with all original documents. Then show cause notices were issued asking as to why the rebate claim should not be denied/rejected under Rule 18 of Central Excise Rules, 2002 read with Section 11B of Central Excise Act; 1944. The Adjudicating Authority has passed order-in-original rejecting rebate claims under Rule 18 of Central Excise Rules, 2002 read with section 11B of Central Excise Act, 1944 on time limitation.

3. Being aggrieved by the impugned order-in-original the applicant filed appeal before Commissioner (Appeals) who rejected the same.

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 mainly on the following grounds:

4.1 The Applicant acted according to the advice of Assistant Commissioner, Maritime, Raigad and vide letter dated 02.03.2009 the applicant request to return the rebate claims so the applicant can re-file Rebate claims to the concerned Jurisdiction within valid time i.e. before expiry of limitation date 21.03.2009. But the Assistant Commissioner, Maritime, Raigad returned the rebate claim number 29395 and 29394 along with original documents on 30.03.2009 i.e. nine days later after the expiry of limitation of one year. What actually Assistant Commissioner, Maritime, Raigad, had to do is to transfer the Rebate claims to the office of concerned Jurisdiction for further process. The Maritime Commissioner, Central Excise, Raigad, has to transfer the rebate claims with reason that the Rebate claim cannot process due to some software problem, to the office of Jurisdictional Assistant Commissioner, Division- II, Surat. But he had not done the same and advice us to re-submit all original documents to Jurisdictional Assistant Commissioner, Division- II, Surat. In this circumstances, the rebate claim submitted with the office of Maritime Commissioner on 19.01.2009 is within one year from the date of shipment of goods and it is not time barred.

4.2 In the present case export of final product is not in dispute. The export documents i.e. ARE-1's, Shipping Bills, Bills of Lading, Mate Receipt, etc. were first submitted before the Maritime Commissioner, Raigad along with the rebate claim on 19.01.2009 and then re-submitted before the Assistant Commissioner, Central Excise, Division-II, Surat-I, was duly signed and sealed by the Custom Authority. Therefore, there is no dispute that the goods where verified before the export, by the Custom Authority. In these circumstances the documentary evidence available on record shows that goods were exported by the Applicant and the said document was verified by the Custom Authority before exports. Further in Para 4.1 (Page No.4) of the impugned order it is stated that "..... Goods were cleared for export under ARE-1 ....."". Thus, the department had not disputed the export

and accepted that the goods were cleared under ARE-1 No.85/07-08 dated 10/03/2008 and ARE-1 No.86/07-08 dated 10/03/2008.

4.3 According to Board Circular No.670/61/2002-CX dated 01.10.2002 rebate claim should be sanctioned within three months from the date of submission of the claim. After any delay had caused for the sanction of rebate claim then the interest should be granted under Section 11BB of Central Excise Act, 1944. Therefore in the present case interest should be granted for the delay sanction of rebate claim, after the period of 3 months from the date of submission on 19.01.2009.

5. Personal hearing was scheduled in this case on 8.8.2013 and 19.9.13. Hearing held at Mumbai on 8.8.2013 was attended by Shri Samay Singh Meena, Superintendent on behalf of the respondent department, who stated that order-in-appeal being legal and proper, may be upheld. Applicant did not attend hearing on either of above dates.

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

7. Government observes that the applicant cleared the goods vide two AREs-1 both dated 10.3.2008 and exported the same. They filed the said claims with Maritime Commissioner, Raigad on 19.1.2009, i.e. within stipulated 1 year time period. The applicant vide their letter dated 2.3.2009 addressed to the said Maritime Commissioner stated that due to computer software problem in Central Excise Office, their claim could not be accepted and hence, the same may be returned to them to enable them to file the same before Jurisdictional Assistant Commissioner. The office of Maritime Commissioner (Rebate) vide their letter dated 30.3.2009 returned the applicant's rebate claims. The applicant subsequently filed rebate claims with Jurisdictional Assistant Commissioner, who rejected the same as time barred having filed after stipulated period of one year. Commissioner (Appeals) rejected applicant's appeal. Now, the applicant has filed this revision application on ground mentioned at para (4) above.

8. Government observes that para 8 of Chapter 8 of CBEC Excise Manual of Supplementary Instructions stipulates that the rebate can be sanctioned by Deputy/Assistant Commissioner of Central Excise having jurisdiction over the factory of production of export goods or the warehouse; or Maritime Commissioner and the exporter has to indicate on the ARE-1 at the time of removal of export goods the office and its complete address with which they intend to file claim of rebate. In the instant case, they have mentioned in the ARE-1 the address of Jurisdictional Assistant Commissioner, Division-II, Surat-I as rebate sanctioning authority. Government notes that goods covered vide 2 AREs-1 were exported from JNCH, Nhava Sheva and ACCE Raigarh who is the Maritime Commissioner for export through Seaport Nhavasheva, may be rebate sanctioning authority in this case and hence, the appellate authority's observation that there was no valid or proper reason to file claims before Maritime Commissioner is not correct.

8.1 The applicant has initially filed rebate claim on 19.1.2009 i.e. within 1 year of stipulated time. Subsequently, they vide letter dated 2.3.2009 addressed to Maritime Commissioner, Raigarh stated that due to some software problem in Central Excise Office, their claims could not be accepted and hence, the same may be returned to them to enable them to file the same with Jurisdictional Assistant Commissioner of Division-II, Surat-I. However, the impugned rebate claims could be returned by Maritime Commissioner vide their letter dated 30.3.2009 which was after 19 days from expiry of one year period. Under such circumstances, the applicant was having no opportunity to file the impugned rebate claims within 1 year stipulated time period with Jurisdictional Assistant Commissioner. In view of said factual position, Government finds force in contention of applicant that initial date of filing rebate claims on 19.1.2009 should be taken as date of filing of rebate claims. Also, the Maritime Commissioner could have forwarded the said claims to Jurisdictional Assistant Commissioner, Division-II, Surat-I or returned the rebate claims immediately to the applicant on receipt of request for such return vide their letter dated 2.3.2010, which would have provided the opportunity to applicant to file impugned rebate claims on time.

- 8.2 Government observes that the applicant initially filed claim within stipulated time limit and there is no dispute about it. 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 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:-

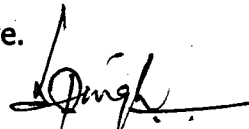
*"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."*

Government is of considered view that the ratio of said case laws is squarely applicable to this case since the same time bar issue is involved in the instant case. As such the rebate claims are to be treated as filed on 19.1.09 and cannot be considered as time barred. As regards claim of interest under Section 11BB, the same may be decided in accordance with law.

9. In light of above circumstances, Government sets aside the impugned orders and remands the cases back to the original adjudicating authority to consider the rebate claim for sanction on merits in accordance with law if otherwise the claims are in order. A reasonable opportunity of hearing be afforded to the respondent.


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

11. So ordered.

  
(D P Singh)

Joint Secretary (Revision Application)

M/s Donear Industries Ltd.  
Revenue Block No.194 & 195  
Kadodara Bardoli Road,  
Vill. Jolwa, Tal-Palsana  
Dist. Surat

Attested  
  
28/10

GOI Order No. 1337 /13-CX dated 25.10.2013

Copy to:

1. Commissioner of Central Excise, Customs & Service Tax, Surat-I, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395 001.
2. Commissioner of Customs & Central Excise (Appeals), Surat-I, 4<sup>th</sup> Floor, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat-395 001.
3. The Assistant Commissioner of Central Excise & Customs, Division-II, Surat-I.
4. Guard File.
- ~~5. PS to JS (RA)~~
6. Spare Copy

ATTESTED



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

1. Introduction  
2. Methodology  
3. Results  
4. Discussion  
5. Conclusion

Abstract  
The purpose of this study is to investigate the effects of...  
Keywords: ...

1.1. Background  
1.2. Objectives  
1.3. Significance

2.1. Study Design  
2.2. Participants  
2.3. Procedures

3.1. Descriptive Statistics  
3.2. Inferential Statistics

4.1. Interpretation of Results  
4.2. Limitations

5.1. Summary  
5.2. Recommendations

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Appendix  
Tables and Figures