

REGISTERED
SPEED POST



F.No. 195/1107-1108/12-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.....

ORDER NO. 134-135/17-Cx DATED 11-9-2017 OF THE GOVERNMENT OF INDIA,
PASSED BY SHRI R.P.SHARMA ADDITIONAL 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.IND/CEX/000/APP/140-141/12 dated 16.5.2012, passed by the
Commissioner (Appeals), Central Excise & Service Tax, Indore

Applicant : L.K.Mehta Polymers Limited, Ratlam (M.P.)

Respondent : Commissioner Central Excise, Indore

ORDER

This Revision Application Number 195/1107-1108/12-RA has been filed by M/s L.K. Mehta Polymers Ltd , (hereinafter referred to as 'the applicant') against the Order-In-Appeal No.IND/CEX/000/APP/140-141/12 dated 16.05.2012, passed by the Commissioner (Appeals), Central Excise & Service Tax, Indore. The applicant has also filed a condonation delay application. The delay has occurred due to the fact that they had earlier filed a appeal before Hon'ble CESTAT but the Hon'ble CESTAT returned the said appeal on the plea that the CESTAT has no jurisdiction over rebate cases as per the provision of Section 35 B of Central Excise Act, 1944

2. This Revision Application is filed mainly on the ground that Commissioner (Appeal) has wrongly rejected their claim of interest on the rebate of duty amount. Brief facts leading to present Revision Application are that the applicant claimed rebate on duty in respect of exported textile goods from the Assistant Commissioner of Central Excise Division, Ratlam but the same was rejected by Assistant Commissioner, Division and subsequently by Commissioner (Appeals) and finally it was allowed by Joint Secretary (RA) when they approached him by way of Revision Application. In compliance of the order of Revisionary Authority, the rebate of duty of Rs.33,762/- was sanctioned in cash and Rs. 4,57,491/- was sanctioned in credit account of applicant. But applicant also claimed interest on duty amount from the Assistant Commissioner, Ratlam Division for delaying the sanctioning of their rebate claim which was rejected. Being aggrieved, applicant filed appeal before the Commissioner (Appeals) who vide his order as mentioned above the same was rejected. Being aggrieved, Applicant has filed the above stated Revision Application to challenge the Commissioner (Appeals) order.

3. A Personal hearing was fixed on 06.09.2017 but neither any one from applicant's side nor from respondent side appeared for personal hearing. This office received a letter dated 06.09.2017 from their advocate, Sh.B.L. Mehta that the matter may be adjourned for November, 2017 and in case no adjournment is possible, their submission dated 18.09.2015 may kindly be considered while deciding the case. Since

the case is quite old, the Government is not inclined to give such long adjournment and the case is taken up for decision on the basis of available records.

4. Apart from seeking relief on merit, applicant has also requested for condonation of delay of 27 days in filing present Revision application for the reason that they had earlier approached CESTAT against the OIA as per advice recorded in the preamble to the OIA. After their appeal was returned by CESTAT for the reasons of lacking jurisdiction in the matter, they filed Revision application without loss of time. The above reason being very genuine, the Government find this case fit for condonation of delay of 27 days and Revision application is taken up for decision on merit.

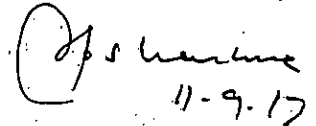
5. Coming to main the prayer of the applicant's regarding payment of interest, applicant's case is that interest is payable to them after 3 months of their original rebate claim filed with the department and not after 3 months of receiving their second application of granting interest after JS(RA) order regarding payment of rebate of duty to them.

Section 11 BB unambiguously provide that interest is payable in the event of non-refunding of duty within 3 month from the date of receipt of application and it is further clarified in explanation (E) in Section 11 BB that where any order of refund is made by Appellate authorities as mentioned therein, order passed by Appellate authority should be deemed to be an order passed under sub section (2) of the Section 11 B. Net effect of Section 11 BB is that the order passed by Appellate authority like Commissioner (Appeals), Appellate tribunal or a court in is required to be considered as the order passed by jurisdictional Assistant /Deputy Commissioner of Central Excise Division. Applying this deeming provision to the present case, it is obvious that the Assistant Commissioner of Division allowed the rebate claim in this case on the date on which the order of JS(RA) was received by him and actually the rebate of duty was given even later on. Even though the revisionary authority is not mentioned in explanation to Section 11 BB, the cardinal principal enshrined in Section 11 BB which is to pay interest on account of delay in giving refund of duty for any reasons, including prolonged litigation, is equally applicable if the rebate of duty amount is finally ordered by the Revisionary Authority and delay is caused on account of departmental litigation.

6. It is not in dispute that the respondent filled the rebate claim much before the revisionary order passed by the Joint Secretary (RA) and payment of rebate/duty in this matter is delayed due to rejection of these claim at the level of AC, Division and Commissioner (Appeals). But when the rebate of duty was sanctioned by the JS(RA), it directly restored the original rebate claim and the delay in payment of rebate claim is computable from the original rebate claim of the respondent. Thus the contention of the applicant that delay should be counted from the date of the receipt of order of Joint Secretary (RA) is not at all legally maintainable. If this argument is accepted, whole purpose and spirit behind Section 11 BB will be defeated. This view is also supported by the following case laws:

- i) **Ranbaxy Laboratories Ltd Vs Union of India{2011(273)ELT 3(SC)}**
- ii) **UOI vs Hamdard (Waqf) Laboratories {2016(333) ELT 193 (SC)}**

8. In view of the above discussion, Government finds that Revision Application filed by applicant's is maintainable and hence is allowed.


11-9-17

(R.P.SHARMA)

(Additional Secretary to the Government of India)

L.K.Mehta Polymers Limited,
Ratlam (M.P.)
Mhow Neemuch Road
Near Land Mark Showroom
Ratlam (M.P.) 457001

Order No. 134-135/17-Cx dated 11-9-2017

Copy to:-

1. The Commissioner of Central Excise, Customs & Service Tax, Manik Bagh Palace, Post Box No.10, Indore (M.P.)-452001
2. The Commissioner (Appeals-1) Customs, Central Excise & Service Tax, Manik Bagh Palace, Post Box No.10, Indore (M.P.)-452001
3. The Assistant Commissioner, Central Excise Division Ratlam (M.P.)
4. PS to JS (Revision Application)
- ✓ 5. Guard File
6. Spare Copy.

ATTESTED

Ravi Prakash
11/09/17

(Ravi Prakash)

OSD (RA)