

REGISTERED
SPEED POST



F.No.195/33/2012-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.....

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ORDER NO. 1393/13-Cx DATED 26.11.2013 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. 428/11 dated 01.11.2011 passed by
Commissioner of Customs & Central Excise
(Appeals), Indore

APPLICANT : M/s Ambika Refinery, 82-A, Industrial Area Mandsaur
(M.P.)

RESPONDENT : Commissioner of Central Excise, Indore

ORDER

This revision application is filed by M/s Ambika Refinery, 82-A, Industrial Area Mandsaur (M.P.) against the order-in-appeal No. 428/11 dated 01.11.2011 passed by Commissioner of Customs & Central Excise (Appeals), Indore with respect to order-in-original No.52/AC/Rebate/RTM/2011-12 dated 22.06.2011 passed by Assistant Commissioner of Central Excise, Ratlam, M.P.

2. Brief facts of the case are that M/s Ambika Refinery, 82-A, Industrial Area Mandsaur (hereinafter referred to as the Noticee) engaged in manufacturing of Soya Refined Oil, Palm Refined Oil, Soya Lecithin and having Central Excise Registration No. AACFA6315XM001.

2.1 The Noticee have submitted a refund/rebate claim on 07.12.2010 for sanctioning rebate of Central Excise duty amounting to Rs.7,02,250/- paid on the Soya Lecithin (Food Grade) exported during the month of October, 2009 to March 2010 under rule 18 of Central Excise Rules, 2002, read with Notification No.19/2004-CE(NT) dated 6.9.2004. The details of above rebate claim is as under :-

S.No.	ARE-1		Duty Amount
	No.	Date	
01.	011	27.10.2009	64,181.00
02.	012	25.11.2009	1,27,588.00
03.	013	28.12.2009	62,179.00
04.	014	30.12.2009	68,662.00
05.	015	04.01.2010	69,888.00
06.	016	06.01.2010	67,924.00
07.	017	16.01.2010	62,954.00
08.	018	14.02.2010	84,114.00
09.	019	02.03.2010	47,380.00
10.	020	02.03.2010	47,380.00
Total			7,02,250.00

2.2 The applicant vide their letter dated 30.12.2010 addressed to the Superintendent, Central Excise, Range Mandsaur, requested that the refund claim pertaining to ARE-1 No.11 and 12 amount to Rs.1,91,769/- are hit by the limitation of time under Section 11B of Central Excise Act, 1944, hence they suo motto requested that this amount may not be considered and taken to be withdrawn from the claim submitted on 07.12.2010.

2.3 During preliminary scrutiny of the said rebate claim, it appeared that the noticee did not fulfill the condition prescribed at 3(b) (i) to the notification No. 19/2004-CE(NT) dated 6.9.2004 as the noticee have not submitted the original copy of ARE-1s with their rebate claim lodged on 07.12.2010. These are vital basic documents for processing of rebate claim. The original copy of ARE-1 was submitted on 9.2.2011. The claims were also filed after lapse of one year and therefore after considering all the submissions, adjudicating authority rejected the rebate claims as time barred and some claims on merit also.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeals) who upheld the rejection of rebate claim in respect of ARE-1 No. 11 to 17 as time barred and allowed the rebate claim in respect of ARE-1 No. 18, 19, 20 which were not time barred.

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 It is humbly submitted that the 'Time Limitation' clause could not have been made the sole ground for the rejection of application. The relevant date for computing the limitation is the date of filing the original claim i.e. 07.12.2010 and not the date on which original documents were submitted. Reliance is place on GOI decision in case of revision application filed in the case of IOC Ltd. reported in 2007(220) ELT 609 GOI. A brief summary of the same is 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 removing defects was submitted – Section 11B of Central Excise Act, 1944 – Rule 18 of Central Excise Rules, 2002.

4.2 As evident from the above date sheet, the claim was filed on 07.12.2010 and the original document were in possession of the department at the Range Superintendent Office of Range Mandasaur even before filing of refund application, as is evident from various letters filed by the applicant to Superintendent Range Mandasaur pertaining to information relating to 'proof of export' wherein they have submitted the original copy of ARE-1s to the Range Superintendent. Pertinent to mention that all such original copy of ARE-1 relating to the subject ARE-1s no. 13 to 17 remained in their possession till 09.02.2011 when these documents were released to the applicant. The applicant has submitted the said original copies on the same date of 09.02.2011 to the Assistant Commissioner Ratlam in compliance to letter issued by them dated 19.01.2011.

4.3 Here it is an admitted fact that delay in submitting the original documents was mainly due to documents lying with Range Office which were not returned in time despite of several reminders. As and when documents were released, the same were submitted to the Assistant Commissioner office.

4.4 Rule 18 of the Central Excise Rules 2002 provides that where any goods are exported the Central government may, by notification, grant rebate of duty paid on such excisable goods. The exports, as evident from ARE-1s were effected under 'Application for removal of excisable goods for export under claim for rebate'. While submitting the letter for acceptance of 'proof of export' to the range superintendent, applicant wrongly made reference of Rule 19 which relates to export without payment of duty. This is purely a clerical mistake and cannot be taken as base for rejecting the claim.

5. Personal hearing was scheduled in this case on 18.10.2013 & 29.10.13. Hearing held on 29.10.13 was attended by Shri Krishan Garg, CA and authorized representative

of company, on behalf of the applicant who reiterated the grounds of revision application.

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

7. On perusal of records, Government observes that as per order-in-original the rebate claims were initially filed on 7.12.2010 within one year's time limit. But the original ARE-1 form was submitted on 9.2.2011 after withdrawing the same from department. Original authority rejected the claims as time barred treating the date of filing rebate claim as 9.2.2011. Commissioner (Appeals) upheld the rejection of rebate claim in respect of goods exported under ARE-1 No.13 to 17 as time barred. However, he allowed rebate claims in respect of ARE-1 No. 18 to 20 since these claims were not time barred. Now applicant has filed this revision application on the grounds stated above.

8. Government notes that applicant has filed the rebate claims on 7.12.2010 enclosing all the documents except original and triplicate copy of ARE-1. Applicant stated that original copy of ARE-1 was submitted to jurisdictional Central Excise Range Officer as a proof of export. It was received back from department only on 9.2.2011 and same day it was submitted before rebate sanctioning authority. Regarding triplicate copy of ARE-1, he contended that same is required to be submitted to range officer directly. Government notes that there are catena of judgment 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 initially 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."

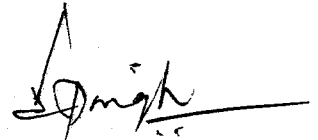
In view of above, the said rebate claims cannot be treated as time barred since it was originally filed before department on 7.12.2010 which is well within the limit period of one year stipulated in section 11B of Central Excise Act, 1944. Government is of considered view that case is required to be remanded back for denovo consideration, for deciding the case on merits.

As regards the discrepancies noticed in some shipping bill with respect to overwriting/cuttings, the explanation given by applicant may be considered on merits.

9. In view of above circumstances, Government sets aside the impugned orders and remands the case back to original authority to decide the case on merits as per law by considering the claims as filed within one year. A reasonable opportunity of hearing will be afforded to the parties concerned.

10. Revision Application is disposed off in above term.

11. So, ordered.



(D.P. SINGH)

JOINT SECRETARY TO THE GOVT. OF INDIA

M/s Ambika Refinery,
82-A, Industrial Area,
Mandsaur (M.P.)

Order No. 1393 /13-Cx dated 26.11.2013

Copy to:

1. Commissioner of Central Excise, Customs & Service Tax, Indore Commissionerate, Manik Bagh Palace, Post Box No.10, Indore (M.P.) - 452001
2. Commissioner of Central Excise (Appeals), 4-Inderlok Colony, Kesharbag Raod, Inodre (M.P.)
3. Deputy Commissioner of Central Excise, Ratlam Division, Central Revenue Building, Ratlam (M.P.)
4. ~~PA to JS(RA)~~
5. Guard File.
6. Spare Copy



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