



REGISTERED
SPEED POST

F.No. 195/1102/11-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...19/12/13

ORDER NO. 1411 /13-CX DATED 18-12-2013 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 : Order in revision application filed, under Section 35 EE of the
Central Excise Act, 1944 against the order-in-appeal
No.37/DIV-II/Noida/2010-11 dated 31.03.2011 passed by
the Commissioner of Central Excise (Appeals) Noida

Applicant : M/s Uniword Telecom Ltd., Noida

Respondent : Commissioner of Central Excise, Noida

ORDER

This revision application is filed by M/s Uniword Telecom Ltd., Noida against the order-in-appeal No.37/DIV-II/Noida/2010-11 dated 31.3.2011 passed by the Commissioner of Central Excise (Appeals) Noida with respect to order-in-original passed by the Assistant Commissioner of Central Excise Division-II, Noida.

2. Briefly stated, the facts of the case are that the applicants are registered with the Central Excise Department for manufacture of electronic items viz. Telephones, Amplifiers, Spider Cel, Public Address Systems, Electrical and Digital Energy Meters etc., falling under Chapter 85 of the Central Excise Tariff Act 1985.

2.1 The party had cleared excisable goods for export under claim of rebate through following ARE- 1's/Invoices.

Sl.No.	ARE No. and Date	Invoice No. and Date	Duty Involved
1	53/03/04 dated 28.02.2004	53 dated 28.02.2004	Rs.1,36,660/-
2	54/03-04 dated 28.02.2004	54 dated 28.02.2004	Rs.3,44,299/-
3	55/03-04 dated 28.02.2004	55 dated 28.02.2004	Rs.2,94,580/-
4	56/03-04 dated 05.03.2004	56 dated 05.03.2004	Rs.3,42,629/-
5	57/03-04 dated 05.03.2004	57 dated 05.03.2004	Rs.1,71,654/-
6	58/03-04 dated 05.03.2004	58 dated 05.03.2004	Rs.1,70,571/-
7	59/03-04 dated 05.03.2004	59 dated 05.03.2004	Rs.3,960/-
		Total	Rs.14,64,353

2.2 The applicants vide their letter dated 22.09.2005, addressed to the Deputy Commissioner, Central Excise, Division-II, Noida, filed a rebate claim of Rs.14,64,353/- of duty paid on export of goods, under Rule 18 of the Central Excise Rules,2002. The said claim was received in the Divisional office on 26.09.2005. The applicants, with their aforesaid letter dated 22.09.2005, also submitted a photo copy of their earlier letter dated 10.02.2005, addressed to the Deputy Commissioner, Central Excise, Division-II, Noida with a photo copy of

'Under Postal Receipt' dated 10.02.2005. The applicants in their letter dated 22.9.05 requested the Deputy Commissioner for processing of their rebate claim of Rs.14,64,353/- as stated to have been submitted earlier vide their earlier letter dated 10.02.2005, sent 'Under Postal Certificate'. Party also submitted following documents along with their letter dated 22.9.05:

- (i) Original and duplicate copies of ARE-1 Nos. 53,54,55 (all dated 28.2.04) 56,57,58 & 59 (all dated 5.3.2004)
- (ii) Photocopies of Invoices Nos. 53,54,55 (all dated 28.2.04) 56,57,58 & 59 (all dated 5.3.2004)
- (iii) Photocopies of shipping bill Nos. (a) 2639062/dt. 8.3.2004 (b) 2739064 dt. 8.3.2004 (c) 2639061/dt. 8.3.2004 (d) 2643053/dt. 10.3.2004 (e) 2643055/dt. 10.3.2004 (f) 2543056/dt. 10.3.2004 and (g) 26440233/dt. 10.3.2004
- (iv) Photocopies of bill of Lading No. (a) FSA/JBL/3331/dated 28.02.04 (b) FSA/JBL/3332/ dated 18.03.04 (c) FSA/JBL/3333/dated 18.03.04 (d) FSA/ JBL/3334 dated 18.03.04 (e) FSA/JBL/3335 dated 18.03.04 (f) FSA/JBL/3336 dated 18.03.04 (g) FSA/JBL/3337 dated 18.03.04.
- (v) Photocopy of RG 23A Part-II register paper - 74 and 75.
- (vi) Seven undated Form R-1's addressed to the Deputy Commissioner, Central Excise Division-II, Noida (applicable for refund of excise duty.)

Since the aforesaid rebate claim, filed by the applicants appeared time barred, they were served upon a notice requiring them to show cause as to why their rebate claim should not be rejected on ground of time limitation. The adjudicating authority vide the impugned order-in-original rejected the rebate claim of the applicants as being time barred.

3. Being aggrieved by the orders-in-original applicant filed appeal 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 these revision applications under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds:-

4.1 The applicant had sent all claims vide letter dated 10.02.2005 under cover of valid postal certificate. Since they had sent all their claims under the cover of postal certificate, the presumption is that it must have been delivered to the office of Central Excise at Noida. In this regard they rely upon judgments Hon'ble Calcutta High Court judgement in the case of A Tosh & Sons Pvt. Ltd. Vs Asstt. Commissioner of Central Excise reported as 1992(60)ELT 200(Cal.); CEGAT, Delhi judgement in the case of Shiv Durga Alloys Pvt. Ltd. Vs Commissioner of Central Excise, Chandigarh reported as 2002(141) ELT 733 (Tri-Del.); CEGAT, Delhi judgement in the case of Harnam Singh Bishan Singh Vs Collector of Central Excise, Chandigarh reported as 1990(46) ELT 345 (Tribunal)

4.2 In Para 6(b) of show cause notice, it is mentioned that stamp of the postal authorities is "illegible" is not correct but the said stamp is very clear and legible and leaves nothing in doubt that the said claims were sent on 10.02.2005.

4.3 There is no customary practice to mention on the receipt of the postal authorities as to which documents are contained in the envelop being sent under the postal receipt. Therefore, the allegation that no documents are mentioned on postal receipt, is out of relevance and unsustainable. However, this submission has not been disputed by the Commissioner (Appeals) in his order-in-appeal. There was only one office of Central Excise centralized in one building for all

divisional offices and therefore the address given on the receipt was sufficient and complete.

4.4 They had sent photocopies of the Original and duplicate copies (and not the duplicate copies as such) of ARE-1s by UPC to the Divisional Central Excise office, since the claim was getting time barred and the person who was dealing with this matter had left the Company and it was not known whether he had filed any claim for rebate. The applicant as a practice, keeps photocopies of such ARE-1s in a separate file for factory's records and the said photocopies were taken from the same.

4.5 It was with great efforts that they could lay their hands and trace the original/duplicate sets of ARE-1s in respect of the rebate claims in question in the month of September 2005 and as such submitted rebate claims along with the original and duplicate copies of ARE-1s together with the photocopies of other required documents on 22.09.05 (received by the divisional office on 26.09.2006). They made exports in a bonafide manner and were entitled for rebate of central excise duty paid on the manufactured goods, no illegality or any kind demerit has been found in our impugned rebate claim or in the export of the goods. Since the goods have been exported by them on payment of duty and all the documents as required for sanction of rebate have been filed which have been found to be in order, the applicant is genuinely entitled for refund of the duty paid on the goods exported.

4.6 The applicant submits that the postal certificates submitted to the department, is evidence in itself of filing the rebate claim in question. It is also not the case that the said postal certificates have been found to be false. If the rebate claim, delivered by postal authorities, is misplaced or not traceable in the Divisional office, the applicant should be deprived of their entitlement to the rebate claim. It is thus not correct that the applicant have not adduced any

evidence regarding delivery of the rebate claim in the Divisional office, as held by the Commissioner (Appeals). Further all the documents as required with the rebate claim have been submitted by the applicant and there is no dispute on this fact.

5. Personal hearing scheduled in this case on 17.10.13 was attended by Shri Abhishek Jaju, Advocate and Shri Sushil Kumar Khandelwal, Manager (Account) on behalf of the applicant who reiterated the grounds of revision application. Shri R.P.Pandey, Superintendent attended hearing on behalf of department and stated that order-in-appeal being legal and proper, may be upheld.
6. Government has carefully gone through the relevant case records, and perused the impugned orders-in-original and orders-in-appeal.
7. On perusal of records, Government observes that the goods were exported vide 7 ARE-I of dated 28.2.04 and 5.3.04 whereas rebate claims were filed on 26.9.05 after lapse of one year time period as stipulated under Section 11B of Central Excise Act 1944. The original authority rejected the said rebate claim as time barred. Appellate authority upheld the said order. Now application has filed this revision application on the grounds stated above.
8. The applicant has been contending that he had filed rebate claim initially vide letter dated 10.2.05 which was sent under postal certificate and therefore rebate claim filed within a year cannot be rejected as time barred. In this regard, Government observes that both the lower authority have concluded that no rebate claim was received in Divisional Office as claimed to have been sent vide letter dated 10.2.05. The findings of original authority in the impugned order-in-original are as under:-

"Discussion of findings:-

- (a) *I find that the party exported the excisable goods vide ARE-1's No. 53 to 55 /03-04 dated 28.02.2004 and 56 to 59/03-04 dated 05.03.2004 and Invoices No. 53 to 55/03-04 dated 28.02.2004 and 56 to 59/03-04 dated 05.03.2004. The party have filed rebate claim vide their letter dated 22.09.2005 alongwith photocopy of their letter dated 10.02.2005 addressed to the Deputy Commissioner, Central Excise, Noida, photocopy of "under postal Certificate" relevant copy of original and duplicate of ARE-1's, photocopy of invoices, photocopy of shipping bills, photocopy of Bills of Lading & photocopy of RG23A Part-II register page - 74 and 75 & seven undated Form R-1's addressed to the Deputy Commissioner, Central Excise, Division - II, Noida which was received in the divisional office on 26.09.2005.*
- (b) *The party have submitted that they have sent the photocopies of the Original and duplicate copies of ARE- 1s by UPC to the Divisional, Central Excise, Office for Rebate claim. Since the claim was getting time barred and the person who was dealing this matter had left the Company and it was not known whether he had filed any claim for rebate. Further, they submitted that the claim sent under the cover of postal certificate, the presumption is that it must have been delivered to the office of Central Excise, at NOIDA.*
- (c) *I observe that as per records of divisional office, no such rebate claim of the party for Rs.14,64,353/- vide letter dated 10.02.2005 was received in the divisional office. Further, the distance between the Central Excise, Divisional office and the party's office/factory is nearer to that of distance between the post office located at Sector-16, Noida, and the party. The party have often used to send their documents through their employers. It is not liable for*

acceptance that why the party have filed their rebate claim under certificate of posting in spite of sending it through their employee."

Government notes that the said findings have clearly established that no such rebate claim dated 10.2.05 was received in Central Excise Office and it is an afterthought of the applicant to cover up the delay by way citing some letter sent under postal certificate. There is no reason to believe that a rebate claim of such big amount of Rs.1464353/- will be sent in such a casual manner. In view of position explained above, it is quite clear that rebate claim was in fact filed on 26.9.05 after one year and therefore said claim was time barred.

9. Government notes that as per explanation (a) to section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of section 11B of Central Excise Act, 1944. The explanation A of section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per explanation B(a)(i) of Section 11B, the relevant date for filing rebate claim means:-

"(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods.-

(i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are load, leaves India, or"

There is no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

10. Applicant has given various reasons for filing rebate claim after a stipulated period of one year. In addition, he contended that delay in filing rebate claim is a procedural lapse and same may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement which is mandatory to be followed. The statutory requirement can be condoned only if there is such provisions under Section 11B. Since there is no provision for condonation of delay in terms of Section 11B, the rebate claim has to be treated as time barred.

11. Government notes that rebate claims filed after one year being time barred cannot be sanctioned as categorically held in the case laws/judgments cited below :-

11.1 Hon'ble High Court of Gujrat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) has held as under:-

"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.

Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority

view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.

The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund claim was filed beyond the period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under :

"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000 ?"

11.2 The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held as under:

"Tribunal, acting under provisions of Central Excise Act, 1944 has no equitable or discretionary jurisdiction to allow a rebate claim de hors the limitation provisions of Section 11B *ibid* – under law laid down by Apex Court that the authorities working under Central Excise Act, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B *ibid* and Section 27 *ibid* and hence

powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims – Section 11B of Central Excise Act, 1944 – Rule 12 of erstwhile Central excise Act, 1944 – Rule 18 of the Central Excise Rules, 2002. – Contextually, in the case of Uttam Steel Ltd. also, the Hon'ble Bombay High Court allowed a belated rebate claim in a writ petition filed by the assessee. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B.”

11.3 Further, it has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others reported in 1987 (28) ELT 185 (SC) that when delay is within condonable limit laid down by the statute, the discretion vested in the authority to condone such delay is to be exercised following guidelines laid down in the said judgment. But when there is no such condonable limit and the claim is filed beyond time period prescribed by statute, then there is no discretion to any authority to extend the time limit.

10.4 Hon'ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

11.5 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed a WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central Excise Act 1944. Hon'ble High Court has observed in para 11 & 12 of its judgement as under:-

"11. Finally it has been sought to be urged that the filing of an export promotion copy of the shipping bill is a requirement for obtaining a rebate of excise duty. This has been contraverted in the affidavit in reply that has been filed in these proceedings by the Deputy Commissioner (Rebate), Central Excise. Reliance has been placed in the reply upon Paragraph 8.3 of the C.B.E. & C. Manual to which a reference has been made above, and on a Trade Notice dated 1 June 2004 which is issued by the Commissioner of Central Excise and Customs Paragraph 8.3 of the Manual makes it abundantly clear that what is required to be filed for the sanctioning of a rebate claim is, inter alia, a self-attested copy of the shipping bill. The affidavit in reply also makes it clear that under the Central Excise rules, 2002 there are two types of rebates: (i) A rebate on duty paid on excisable goods and (ii) A rebate on duty paid on material used in the manufacture or processing of such goods. The first kind of rebate is governed by Notification No. 19/2004 dated 6 September 2004. In the case of the rebate on duty paid on excisable goods, one of the documents required is a self-attested copy of the shipping bill. For the second kind of rebate a self-attested copy of the export promotion copy of the shipping bill is required. Counsel appearing on behalf of the petitioner sought to rely upon a Notification issued by the Central Board of Excise and Customs on 1 May 2000. However, it is abundantly clear that this Notification predates the Manual which has been issued by the Central Board of Excise and Customs. The requirement of the Manual is that it is only a self-attested copy of the shipping bill that is required to be filed together with the claim for rebate on duty paid on excisable goods exported.

12. For the aforesaid reasons, we hold that the authorities below were justified in coming to the conclusion that the petitioner had filed an application for rebate on 17 July 2007 which was beyond the period of one year from 12 February 2006 being the relevant date on which the goods were exported. Where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law."


12. In view of above position, the rebate claim filed after one year's time limit stipulated under Section 11B of CEA 1944 read with Rule 18 of CEAR 2002 is clearly hit by time limitation clause and cannot be entertained at all. As such it is rightly rejected and Government do not find any infirmity in the impugned order-in-appeal upholding the rejection of said claim as time barred.

Order No. 1411 /13-CX dated 18-12-2013

Copy to:-

1. The Commissioner of Central Excise Noida, C-56/42, Sector 62, Noida (UP)
2. The Commissioner (Appeals) Central Excise Noida, C-56/42, Sector 62, Noida (UP)
3. The Assistant Commissioner of Central Excise, Division-II, Noida, C-56/42, Sector 62, Noida (UP)
- ✓ 4. PS to JS (Revision Application)
5. Guard File
6. Spare Copy.

ATTESTED



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