

**REGISTERED
SPEED POST**



**F.No. 195/134/12-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.....21/11/14.....

Order No. 1438 /13-cx dated 31-12-2013 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 : Revision Application filed,
under section 35 EE of the Central Excise,
1944 against the Order-in-Appeal No.
83/2011/(BVR)/Commr (A)/RBT/RA dated 12-12-2011
passed by Commissioner of Customs and Central
Excise, (Appeals), Rajkot
- Applicant : M/s Goran Pharma Pvt. Ltd.,
GIDC-1, Bhavnagar Rajkot Road,
Sihor-364240, Dist. Bhavnagar (Gujrat)
- Respondent : The Commissioner of Central Excise,
Commissionerate, Race Course Ring Road,
Rajkot.

ORDER

This revision application is filed by M/s Goran Pharma Pvt. Ltd., GIDC-1, Bhavnagar Rajkot Road, Dist. Bhavnagar (Gujrat) against the Order-in-Appeal No. 83/2011/(BVR)/Commr (A)/RBT/RA dated 12-12-2011 passed by Commissioner of Customs & Central Excise, (Appeals), Rajkot with respect to Order-in-Original passed by the Assistant Commissioner of Central Excise, Bhavnagar.

2. Brief facts of the case are that the applicant had filed rebate claim for Rs. 86,507/- which was received in jurisdictional Central Excise office 02-12-2010. The claim was filed for rebate of duty paid on export of Toothpaste falling under CTH 33061020 of the Central Excise Tariff Act, 1985 vide ARE-1 form. The rebate claim is required to be filed within one year from relevant date in terms of section 11B. As per explanation (A) of section 11B refund includes rebate of duty of excise on excisable goods exported out of India. Further in terms of explanation (B) (a) (i) of section 11B of the Act, 'relevant date' means in case of goods exported out of India, where a refund of excise duty paid is available in respect of the goods, if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India. In terms of section 11B of the Act, the time limit for filing rebate claim is one year from the date on which the ship or the aircraft in which such goods are loaded, leaves India. However, on scrutiny of endorsement made in this regard on the ARE-1 by the Customs authorities, it has been noticed that the consignment covered under said ARE-1 was shipped under shipping bill No. 7729365 dated 30-09-2009 by SS Flight No. CMA CGM PUGET which left on 05-10-2009. Thus the time limit for filing rebate claim expires on 04-10-2010, whereas claimant has filed the claim only on 02-12-2010, i.e after the stipulated time period of one year. Therefore it appeared that claim is not admissible to the applicant being time barred. A show cause notice was issued by the lower authority to show cause as to why the rebate claim should not be rejected as the claim was filed after the stipulated time period. The lower authority vide impugned Order-in-Original had rejected the rebate claim as time barred.

3. Being aggrieved by the said Order-in-Original, 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 on the following grounds:

4.1 The main issue is to decide whether the provision of the section 11B, especially the provisions subsection (A) and (B) of section 11B of the Central Excise Act, 1944 are applicable or not with reference to the statutory provisions of granting a rebate a claim claimed under Rule 18 of the central Excise Rules 2002 read with notification issue there under or otherwise. In the present case, only rule 18 of the Central Excise Rule 2002 is the main statutory provisions of claiming such rebate claim applicable. In the said notification, No such provision has been mentioned regarding the application of the provision section 11B of the Central Excise Act, 1944, so far as the provisions of section 11B (5) (A) & (B) are concerned. In view of the above statutory provisions for claiming rebate under Rule-18, the present rebate claim was filed in accordance with the said statutory laws and required to be sanctioned and paid to us without invoking such time limit as contemplated under the said section 11B in the circumstances when the export has been made within the statutory period of 6 months.

4.2 In the provision of clause 3(c) of the said Notification, it has been provided that such rebate claim filed electronically and also further provided that after goods are exported or under section 51 of the Customs Act, 1962 has been issued, the rebate of excise duty shall, if the claim is found in order, be sanctioned and disbursed by the Assistant Commissioner of customs or the Deputy Commissioner of Customs. In this clause no such applicability of the said provision of section 11B has been made. Similarly, your applicant had declared their intention to the effect that the goods were to be exported under claim of rebate. In view of these provisions, your applicant is entitled the rebate claim as claimed under the provisions of rule 18 of Central Excise Rules 2002.

4.3 In the provisions of Rule 5 of the Cenvat credit rule 2004, such refund of cenvat credit is to be granted subject to the conditions and limitations specified by the Central Government by notification. Such limitations and conditions have been specified under Notification No. 5/2006-CE (NT) dtd. 14-06-2006, wherein such refund is to be allowed before the expiry of the period as specified in section 11B of the Central Excise Act, 1944. Such applicability of the limitation period as specified in section 11B in the said notification No. 05/2006-CE (NT) issued under the provisions of Rule 5 of the Cenvat credit Rule-2004, has not been specified in the notification No. 19/2004-CE (NT). Therefore the impugned Order-in-Appeal is required to be set aside.

4.4 The applicant relied upon various case laws in favour of their contention.

5. Personal hearing scheduled in this case on 27-11-2013 was attended by Shri D.G. Madniwale, Superintendent on behalf of the respondent department who stated that Order-in-Appeal being legal and proper may be upheld. Applicant neither attended the hearing nor sought the adjournment of case. As such Government takes up the case for decision on the basis of available case records.

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 instant rebate claim has been rejected as time barred having filed after one year from the date of export of goods. Commissioner (Appeals) up held impugned Order-in-Original. Now, the applicant has filed this revision application on grounds mention in para (4) above.

8. Government finds that it is undisputed fact that rebate claim was filed after one year from date of export of goods. 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.

9. 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 and it is mandatory to follow the same. 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.

10. 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 :-

10.1 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 ?"

10.2 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.

10.3 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.

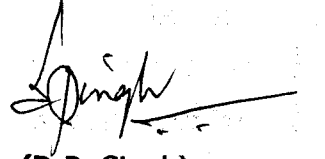
10.4 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed a WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central 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."

11. In view of above position, the rebate claim filed after one year's time stipulated under section 11B of Central Excise Act, 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.

12. The revision application is thus rejected in terms of above.
13. So ordered.

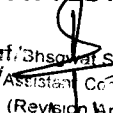


(D.P. Singh)

Joint Secretary to the Govt. of India

M/s Goran Pharma Pvt. Ltd.,
GIDC-1, Bhavnagar Rajkot Road,
Sihor-364240, Dist. Bhavnagar (Gujrat)

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. 1438 /13-Cx dated 31-12-2013

Copy to:

1. The Commissioner of Central Excise, Commissionerate, Race Course Ring Road, Rajkot.
2. The Commissioner (Appeals), 2nd Floor, Central Excise, Race Course, Ring Road, Rajkot 360001.
3. The Assistant Commissioner of Central Excise, City Division- 43, Hariyala Plot, Krishnanagar, Bhavnagar.
4. Shri D.G. Madniwale, Superintendent, c/o M/s Goran Pharma Pvt. Ltd., GIDC-1, Bhavnagar Rajkot Road, Sihor-364240, Dist. Bhavnagar (Gujrat)
5. PS to JS (RA)
6. Guard File.
7. Spare Copy

ATTESTED



(BHAGWAT P. SHARMA)
OSD (REVISION APPLICATION)