REGISTERED SPEED POST

सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/824/13-RA /5-216 Date of Issue:- 18.11.19

ORDER NO. 144/2019-CX(SZ)/ASRA/MUMBAI DATED 04.11.2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT. SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/824/13-RA	M/s C.R.I. Pumps Pvt. Ltd., Coimbatore	Commissioner, CGST & Central Excise, Coimbatore.

Subject: Revision applications filed under Section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. CMB-CEX-000-APP-095-12 dated 21.05.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore.

ORDER

This Revision application is filed by M/s C.R.I. Pumps, Coimbatore (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. CMB-CEX-000-APP-095-12 dated 21.05.2012 passed by the Commissioner of Central Excise (Appeals), Coimbatore.

2. The Brief facts of the case are that the applicant have filed 11 rebate claims for total amount of Rs. 77,92,731/- being the Central Excise Duty paid on the goods cleared for export viz. Submersible Pumps, Submersible Motors and Control Box @ 8%, 16% and 16% respectively and subsequently had claimed the rebate of duty on goods exported. After scrutiny of the claims, the rebate amount of the said 11 claims were sanctioned on the ARE-1 value which is equal to FOB value and the Cenvat Credit in respect of duty paid on the ARE-1 value which is in excess of FOB value was allowed to be re-credited.

3. The rebate sanctioning authority had also observed that the applicant has mentioned the description of goods as 'Submersible Pump Sets' consisting of submersible pump, submersible motor & control boxes in the export documents viz. Shipping Bills. The 'Submersible Pump Sets' attract duty @ 8%, whereas, when it is classified as pump and motor separately, they attract duty @ 8% and 16% & or 8% & 14% respectively. It appeared that the intention of the applicant to show clearance of pump set as pump and motors separately is to encash the huge amount of Cenvat credit lying with them unutilised in their cenvat account. As such, 5 show cause notices were issued to recover the excess paid rebate amount of Rs. 12,22,357/- (Rupees Twelve Lakh Twenty Two Thousand Three Hundred and Fifty Seven Only) under Section 11A of Central Excise Act, 1944, along with interest under Section 11AB(i).

3. The adjudicating authority vide order in original No 01/2011 dated 28.02.2011 confirmed the excess paid rebate of Rs. 12,22,357/- from the applicant and allowed the re-credit of the excess duty payment into the CENVAT credit account.

4. Aggrieved by the said order, the applicant filed an appeal with Commissioner (Appeals), Coimbatore. The Appellate Authority vide Order in Appeal No. CMB-CEX-000-APP-095-12 dated 21.05.2012 upheld the order in original.

5. Being aggrieved, applicant filed the instant revision application before Central Government under Section 35EE of Central Excise Act, 1944on the grounds that:-

5.1 the present application is not time barred since Section 14 of the Limitation Act, 1963 provides for exclusion of time of proceedings bona fide before the Court without jurisdiction.

5.2 the order in original sanctioning rebate has attained finality. The applicant submitted that in terms of Section 35 of the Central Excise Act, 1944, the order in originals sanctioning rebate claims are appealable orders. The department, if aggrieved, should have preferred an appeal to the Commissioner (Appeals) within sixty days from the date of communication of order.

5.2 the CBEC vide Circular No. 510/06/2000-CX dated 03.02.2000 specifically clarified that once duty has been paid on exported goods, rebate has to be allowed equivalent to duty paid. It was further clarified that the rebate sanctioning authority should not examine the correctness of assessment but should examine only the admissibility of rebate of duty paid on the export goods covered by the claim.

5.3 The Board vide Circular No. 262/96/96-CX 6 dated 06.11.1996 has clarified that the rebate of duty paid through RG-23 C Part II is also admissible and is permitted to be paid in cash /through cheque.

5.4 once it is not disputed that the procedure and the conditions prescribed for the purpose of claiming rebate of duty is fulfilled by the applicant it cannot be held that the rebate so granted is incorrect / erroneous.

5.5 the applicant submit that recovery of rebate already sanctioned is permissible under Section 11A of the CEA, 1944 only when it is sanctioned erroneously.

5.6 the applicant submit that in terms para 4.3 of the Foreign Trade Policy-2004, DEPB is granted to exports on specified percentage of the FOB value of the export goods in order to neutralise the incidence of import duties relatable to the said export product. Sr. No. 305 of product group Engineering Products (Product Code No. 61) specifically covers submersible water pump sets and the rate of DEPB against this

entry is 6%. Therefore, it is clear that the export product is bought and sold as a 'Submersible Pump Set'.

6. A Personal Hearing was held in matter on 23.08.2019, Ms. Payal Nahar, Chartered Accountant appeared on behalf of the applicant for hearing. No one appeared on behalf of the Revenue. The consultant reiterated the submission filed through Revision applications and written brief along with the case laws filed. She also pleaded that the entire proceeding are infractious in the light of GST regime.

7. Government has carefully gone through the relevant case records available in case file, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government first proceeds to discuss issue of limitation in filing this revision application. The chronology of events is as under.

a) Date of receipt of impugned order in Appeal dated 21.05.2012	:	25.05.2012
b) Date of filing appeal before Tribunal	:	23.08.2012
c) Time taken in filing appeal before Tribunal	:	90 days.
d) Date of receipt of Tribunal order dated 22.07.2012	:	22.07.2013
e) Date of filing of Revision Application	:	18.09.2013
f) Time taken from date of receipt of Tribunal order to the date of filing of revision application.	:	58 days

From the above, it is clear that applicant has filed this revision application after 148 days i.e 4 months and 28 days, when the time spent in proceedings before CESTAT is excluded. As per provisions of Section 35EE of Central Excise Act, 1944, the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay upto another 3 months can be condoned provided there are justified reasons for such delay. The Government considers that revision application is filed after a delay of 58 days which is within condonable limit. Government, in exercise of powers under Section 35EE of the Central Excise Act, 1944 condones the said delay and takes up the revision application for decision on merit.

9. The Government finds that the basic issued involved in the instant case is determination of the classification of 'Submersible Pump Set'. In this regards, it is

observed that 'Submersible Pump Set' is a unit consists of pump, motor unit and control panel. Since, these three units being integral parts of 'Pump Set', there was no need to classify them under separate Chapter Sub Heading and clear them on payment of Central Excise Duty at different rates when the product 'Pump Set' has specific heading i.e. CSH 8413 under CETA 1985 as reproduced below :

> *' 8413 PUMPS FOR LIQUIDS, WHETHER OR NOT FITTED WITH A MEASURING DEVICE; LIQUID ELEVATORS - Pumps fitted or designed to be fitted with a measuring device : '*

The Government, therefore, holds that the impugned product should have been classified under CSH 8413 of CETA 1985 for the purpose of assessment of Central Excise Duty without relying on any other statute which operates on different field. Hence, in the instant case, the duty on 'Submersible Pump Set' should have been paid @ 8% as a whole instead of classifying them under different CSH and paying the duty at 14% on motor and at 8% on pumps separately.

10. The Government observes that the applicants have incorrectly classified the Pump set, Motor unit and Control Panel under different CSH and cleared them at higher rate of duty resulting in sanctioning of excess refund by the rebate sanctioning authority. The refund sanctioned at such higher rate, being erroneous, is recoverable from them under the appropriate provisions of Central Excise Act.

11. The Government notes that the applicant while relying on the following case laws has contended that the Department in the instant case should have preferred an appeal before the Commissioner (Appeals) under provisions of Section 35 of the Central Excise Act, 1944 instead of invoking the provisions of Section 11A of the CEA, 1944.

11.1 In case of CCE, Mumbai vs. Bigen Industries Limited reported in 2006 (197)E.L.T. 305 (S.C.) the Hon'ble Supreme Court has held that once a decision between the parties on same facts is not challenged by the revenue by way of an appeal, the same attains finality. The facts of the case pertain to the decision of authority to register the trade mark in favor of the assessee which was found to be erroneous. However, in the instant case, the matter pertains to the recovery of erroneously granted rebate claim under specific provisions of recovery under Section

11A of Central Excise Act, 1944 and hence the ratio of the case cited by the applicant is not relevant to the fact of the matter.

11.2 In case of CCE, Chennai-I Vs. I.T.C. Ltd. reported in 2006 (204)E.L.T. 363 (S.C.) , it was held by the Supreme Court that once the department does not challenge the findings of an earlier order same attains finality. The Government in this regards observe that the case pertains to the determination of notional profit proposed to be added at 10% of cost of product. Whereas in the instant case, the issue pertains to recovery of erroneous refund sanctioned to the applicant. The issues and circumstances being different in nature, the said case law is not applicable in the instant case. The cases referred by the applicant are distinguishable on facts.

11.3 The Government finds that the Applicant has contended that department has not reviewed the Order-in-Original under which rebate claims were sanctioned and hence it was not legally permissible for the department to initiate proceedings under Section 11A of Central Excise Act, 1944 without reviewing the Order-in-Original under Section 35E of Central Excise Act, 1944. Government notes that the judgment of Hon'ble High Court of Bombay in the case of *M/s. Indian Dye Stuff Industries Ltd.* v. *UOI* [2003 (161) E.L.T. 12 (Bom.)] is squarely applicable to the present facts of the case. In the said judgment it is held that Section 11A of Central Excise Act, 1944 being an independent substantive provision, the appellate proceedings are not required to be initiated before issuing show cause notice under Section 11A if there are existing grounds such as short levy, short recovery or erroneous refund etc. Section 11A is an independent substantive provision and it is a complete code in itself for realisation of excise duty erroneously refunded. There are no pre-conditions attached for issuance of notice under Section 11A for recovery of amount erroneously refunded. This decision of Bombay High Court has been upheld by Hon'ble Supreme Court reported as [Navinon Ltd. v. U.O.I. - 2004 (163) E.L.T. A56 (S.C.)] where Supreme Court has held that recovery of duty erroneously refunded is valid in law under Section 11A of Central Excise Act and there is no need of first filing the appeal against the order by which refund was erroneously sanctioned.

11.4 In view of the principles laid down in above said judgments, Government holds that the erroneous refund/rebate sanctioned under an order can be recovered by invoking provisions of Section 11A of Central Excise Act, 1944, without taking recourse to provisions of Section 35E ibid. The Government holds that non filing of appeal against the order does not provide any immunity to the applicant and further does not prevent the Department from taking the corrective measures to recover the erroneous amount refunded to the applicant, since there is no pre-condition of reviewing the order under Section 35E before issuing show cause notice under Section 11A for recovery of erroneous refund. Hence the measures taken by the Department to recover the erroneous refund amount is legal and proper.

12. In view of discussion and findings elaborated above, the Government finds no infirmity in the impugned Order in Appeal and therefore upholds the same.

13. The Revision Application is therefore rejected being devoid of merit.

14. So, ordered.

(SEEMA ARORA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To,

M/s C.R.I. Pumps Pvt. Ltd.,
Ransar Industries-I, 7/46-1,
Keernatham Road, Saravanampatti,
New Power Hosue, Vaiyampalayam,
Coimbtore- 641 035.

Copy to :

1. The Commissioner of Central Goods & Service Tax, Madurai Commissionerate, Central Revenue Building, Bibikulam, Madurai- 625 002.
2. The Commissioner of Central Excise (Appeals), Central Revenue Building, Lal Bahadur Shastri Marg, Madurai- 625 002.
3. Sr. P.S. to AS (RA), Mumbai.
4. Guard File.
5. Spare copy.