

REGISTERED
SPEED POST

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, Cuff Parade,
Mumbai- 400 005

F.No.198/89/13-RA

Date of Issue: 28/05/2018

ORDER NO. ~~158~~ /2018-CX (WZ)/ASRA/MUMBAI DATED 21/05/2018 OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. P-II/AK/35/2013 dated 14.05.2013 passed by the Commissioner Central Excise(Appeals), Pune II.

Applicant : The Commissioner of Central Excise & Service Tax, Kolhapur.

Respondent : M/s Crown Industries, Sangli

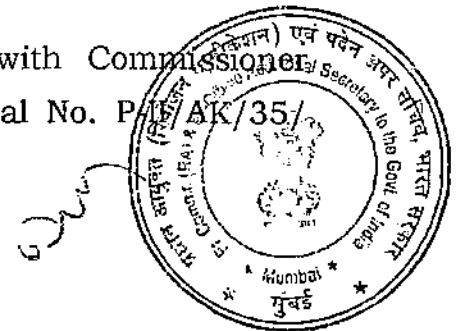


ORDER

This Revision application is filed by The Commissioner of Central Excise & Service Tax, Kolhapur (hereinafter referred to as 'applicant') against the Order-in-Appeal No. P-II/AK/35/2013 dated 14.05.2013 passed by the Commissioner Central Excise(Appeals), Pune-II.

2. M/s Crown Industries 188-191, Vasantdada Ind. Estate, Sangli, Dist. Sangli, Pin- 416 503 (the respondent), had filed 2 [two] rebate claims [one for Rs.62,918/- (Rupees Sixty Two thousand Nine Hundred and Eighteen) and the other for Rs.70,601/- (Rupees Seventy Thousand Six hundred and one)] on 10.05.2011 with the Assistant Commissioner, Central Excise, Sangli Division. The said claims were sent to the concerned Range Superintendent for verification. The Range Superintendent pointed out some discrepancies & communicated the same under letter dated 15.06.2011 with request to comply with the queries within four days. However, the claimant, instead of complying with the queries, expressed their desire to withdraw the rebate claim files to enable them to resubmit the same after correction, under their letter dated 06.07.2011. As per claimant's request, the Assistant Commissioner, Central Excise, Sangli Division returned both the claims to the claimant under letter F. No. VGN(30)RC/Misc/2011-12 dated 08.07.2011. Subsequently, the claimant filed these two rebate claims, through post, under a letter dated 15.06.2012, which were received by the Divisional Office on 03.07.2012. It was further observed that while filing the rebate claims, the claimant had given reference of Range Superintendent's letter dated 15.06.2011 and further stated that they tried to get the relevant documents in time limit but unfortunately the dealing assistant of the exporter could not supply the same. Show cause notices were issued to the respondent on 07.08.2012 and 14.08.2012 and the issue was decided by the Assistant Commissioner of Central Excise, Sangli Division vide Order-in-Original No. SLI/ASC/CEX/41/ADJ/2012-13 dated 28-09-2012 wherein both the rebate claims were rejected as time barred.

3. Being aggrieved, the respondent filed appeal with Commissioner Central Excise (Appeals), Pune-II. Vide Order-in-Appeal No. P-II/AK/35/2013



2013 dated 14.05.2013 the Commissioner Central Excise(Appeals), Pune-II allowed the appeal filed by the respondent.

4. Being aggrieved with the above Order-in-Appeal, the applicant department has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government mainly on the following grounds:

4.1 The claimant failed to file rebate claims within the time limit prescribed under Section 11B of Central Excise Act, which reads as under:-

"Claim for refund of (duty and interest, if any paid on such duty)- Any person claiming refund of any (duty of excise and interest, is any, paid on such duty) may make an application for refund of such (duty and interest, if any, paid on such duty) to the (Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise) before the expiry of one year (from the relevant date) (in such form and manner) as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in Sub Section 12 A) as the applicant may furnish to establish that the amount of (duty of excise and interest, if any, paid on such duty) in relation to which such refund is claimed was collected from , or paid by, him and the incidence of such (duty and interest, if any, paid on such duty) had not been passed on by him to any other person....."

"Explanation- For the purpose of this Section-

(A) "refund" includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) "relevant date" 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



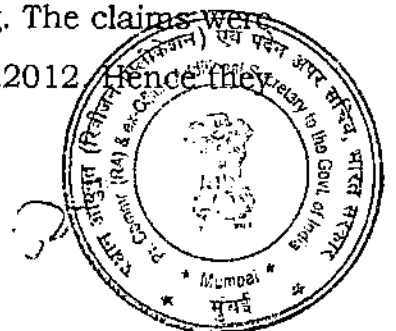
or , as the case may be, the excisable materials used in the manufacture of such goods,-

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

In the instant case, the claimant had filed said two rebate claims on 10.05.2011 with the Assistant Commissioner, Central Excise, Sangli Division. The said claims were sent to the concerned Range Superintendent for verification. The Range Superintendent pointed out some discrepancies & communicated the same under letter dated 15.06.2011 with request to comply with the queries. However, the claimant, instead of complying with the queries, expressed their desire to withdraw the said claims under their letter dated 06.07.2011. As per claimant's request, the Assistant Commissioner, Central Excise, Sangli Division had returned both the claims to the claimant under letter F. No. VGN(30)RC/Misc/2011-12 dated 08.07.2011.

As the claims were withdrawn by the claimant on 08.07.2011, the said claims have been disposed off by way of withdrawal. Therefore, it was the responsibility of the assessee to file the claims within the prescribed time limit .

- 4.2 The rebate claims filed by the claimant through post under letter dated 15.06.2012 (received on 03.07.2012) have clearly become time barred.
- 4.3 It appeared that the goods have left India on 11.02.2011 and 14.02.2011 respectively. The claimant was required to file subject rebate claims on or before 10.02.2012 and 13.02.2012 respectively. The date on which the claims are filed along with all the required documents is the date of filing. The claims were filed with all the required documents on 03.07.2012, hence they became time barred.

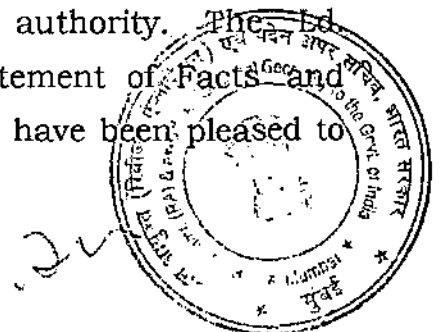


The CEGAT , South Regional Bench, Madras in a case Ashok Leyland Limited , Madras V/s Collector of Central Excise Madras (1983 (14) E. L. T. 2523 (C.E.G.A.T.) has held that time limit cannot be waived on the ground of delayed receipt of buff copies of AR 4 Form. The prescription of time limit within which a claim for rebate has to be made is one under the Act itself. The issue involved in this case is somehow similar to the present case in as much as the claimant has failed to file rebate claim within stipulated time limit.

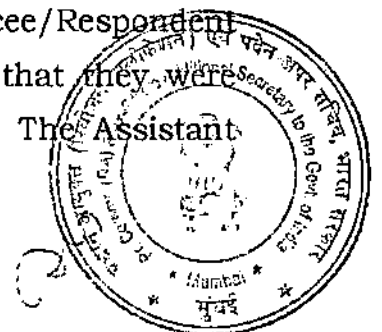
Based on the aforesaid grounds the applicant prayed for setting aside the Order in Appeal No. P-II/AK/35/2013 dtd.14.05.2013 passed by the Commissioner (Appeals), Central Excise, Pune II and upholding the Order in Original No.SLI/ASC/CEX/41/ADJ/2012-13 dtd. 28. 09. 2012 passed by the Assistant Commissioner, Central Excise Sangli Division.

5. The respondent in response to the show cause notice issued in February 2014 filed the following cross objections:-

- That under Section 35EE (2) of the said Act, it has been stipulated that an application under sub-section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made. From the copy of the 'Revision Application' in form EA-8 sent to the Noticee/Respondent, it is seen that the receipt of order has been shown on 23.05.2013 but from the said copy it is not discernible as to whether the said application has been submitted within three months from the date of receipt of the order and in case the same has been filed after three months, the Noticee/Respondent request to reject the application;
- That the Noticee/Respondent filed appeal with the Commissioner (A) against the order passed by the lower authority. The Ed Commissioner(A) on consideration of the 'Statement of Facts and Grounds of Appeal' and relied upon case laws, have been pleased to allow the appeal to grant rebate;



- That while filing the 'Revision Application', the Assistant Commissioner has not enclosed the copy of the 'Appeal' in Form EA-1 and other documents. For ready availability, the Noticee / Respondent enclose the same, and crave leave to allow them to rely on the same and for prolixity, the contents are not reproduced;
- That in the 'Revision Application', it has been contended that the rebate was claimed initially on 10.05.2011 against ARE-1 Nos. 59 dated 19.01.2011 and 61 dated 28.01.2011, which was well within the time limit of one year but the said claim was withdrawn and submitted on 15.06.2012 and so barred by limitation. The Noticee/Respondent enclose the copy of the letter dated 06.07.2011, from which it can be seen that they desired to withdraw the claim filed to enable to resubmit the same after correction of defects pointed out by the department vide its letter dated 15.06.2011, where one of the defects is relating to re-submission of legible copy of Shipping bill & B/L Copy in respect to ARE-1 No. 65 dated 11.01.11 & ARE-1 No. 54 dated 19.01.11 and other defects as mentioned in the said letter. The defects as mentioned in the said letter were afterwards resolved/corrected by Noticee/Respondent and Noticee/Respondent filed the rebate claim again through post under letter dated 15.06.2012. Therefore, the Noticee/Respondent was of the bona fide belief that in case of re-submission of filing of rebate claim after correction, the actual filing date will be the date when the claim was filed initially and not the date when the claim was again filed after correction of defects. In the instant case, Noticee/Respondent has filed the claim within the statutory time limit as mentioned under Section 11B. Also, the Assistant Commissioner vide his letter dated 08.07.2011, allowed them to withdraw the claim without mention/direction to resubmit the claims within stipulated time of one year;
- That in the 'Revision Application', it has been also contended that the withdrawal of claim to be treated as the claims were disposed of by way of withdrawal, which is not correct since the Noticee/Respondent in their letter dated 06.07.2011 categorically stated that they were withdrawing to resubmit the claims after correction. The Assistant



Commissioner allowed the same which means that he allowed to resubmit the claims after correction since as stated above, he did not direct to resubmit the claims within stipulated time of one year. The Noticee/Respondent rely on the case law IN RE: VEE EXCEL DRUGS AND PIARMA. PVT. LTD. reported in 2012 (283) E.L.T. 305 (G.O.I.), wherein the Government of India observed that the Applicant was required to file rebate claim within one year even without Shipping Bill copy so as to avoid the rebate claim getting time-barred. In the instant case, the claims with defects filed within one year to avoid the rebate claim getting time-barred and so such claims even resubmitted after one year would not be barred by limitation. They further rely on the decision of the Government of India in the case of IN RE: DAGGER FORST TOOLS LTD. reported in 2011 (271) E.L.T. 471 (G.O.I.), wherein it has been decided that rebate claims not hit by limitation as initial date of filing claim is the relevant date under Section 11B of the said Act and it has also been observed that technical deviation or procedural lapses to be condoned if there is sufficient proof of export of duty paid goods.

7. A Personal hearing in the matter was fixed on 15.01.2018. Shri Dinesh A Nanal, Assistant Commissioner, Division -IV Sangli, CGST, Kolhapur appeared for the personal hearing on behalf of the applicant and reiterated the submissions filed in the revision application, written submissions made on the date of hearing along with case laws and pleaded that OIA be set aside and RA filed by them be allowed. Shri R.V. Shetty, advocate for the respondent appeared for the hearing on 16.01.2018 reiterated the submissions filed through written brief along with case laws and prayed that OIA be allowed and RA be dismissed.

8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. As regards respondent's contention that from the copy of the 'Revision Application' in form EA-8 sent to the Noticee/Respondent, it is seen that the receipt of order has been shown on 23.05.2013 but from the said copy it is not discernible as to



whether the said application has been submitted within three months from the date of receipt of the order and in case the same has been filed after three months, the Noticee/Respondent request to reject the application, Government observes that the present revision application has been filed by the department on 21.08.2013 i.e. within the time limit stipulated under Section 35EE (2) of the Central Excise Act, 1944 and therefore the same is not time barred and therefore, Government proceeds to decide the case on merits.

9. Government observes that in the instant case, the respondent had filed said two rebate claims on 10.05.2011 with the Assistant Commissioner, Central Excise, Sangli Division. The said claims were sent to the concerned Range Superintendent for verification. The Range Superintendent pointed out some discrepancies & communicated the same under letter dated 15.06.2011 with request to comply with the queries. However, the respondent, instead of complying with the queries, expressed their desire to withdraw rebate claim files to enable them to resubmit the same after correction, under their letter dated 06.07.2011. As per respondent's request, the Assistant Commissioner, Central Excise, Sangli Division had returned both the claims to the claimant under letter F. No. VGN(30)RC/Misc/2011-12 dated 08.07.2011. Thereafter, the respondent filed the rebate claims with all the required documents through post under letter dated 15.06.2012 (received on 03.07.2012) and therefore, were rejected by the original authority as time barred.

10. While allowing the appeal filed by the respondent against the Order in Original passed by the original authority, Commissioner (Appeals) observed that:

It is observed from the records that the Appellants initial claims were received in the Assistant Commissioner's office on 10-05-2011 which were well within the time. The said claims were taken back by the Appellants for the rectification of the discrepancies after the said discrepancies were intimated by the Department. The Appellants in their letter dated 06-07-2011, in which they have withdrawn the claims for rectification, have given the reference of Department's letter under which the discrepancies were intimated to them. The Appellants while resubmitting the claim under their letter dated 15-06-2012 have



again referred to the Range Superintendent's letter dated 15-06-2011. The Appellants have further mentioned in this letter that there was a delay in submission of documents as they had to obtain the documents from the exporter for rectification of the discrepancies. Thus it is observed that the claims received on 03-07-2012 were in continuation of the claims received in the office of Assistant Commissioner on 10-05-2011. Therefore, I do not agree with the learned Adjudicating Authority's findings that the said rebate claims are time barred.

11. Now, vide instant revision application the applicant departments has prayed for setting aside the Order in Appeal No. P-II/AK/35/2013 dtd.14.05.2013 passed by the Commissioner (Appeals), Central Excise, Pune II and upholding the Order in Original No.SLI/ASC/CEX/41/ADJ/2012-13 dtd. 28. 09. 2012 passed by the Assistant Commissioner, Central Excise Sangli Division on the basis of grounds mentioned at para 4 supra and their submissions dated 15.01.2018 and the case laws relied upon.

12. Government finds it pertinent to note the contents of the letter dated 06.07.2011 given by the respondent to the then Assistant Commissioner, Central Excise, Sangli Division. The said letter reads as under :-

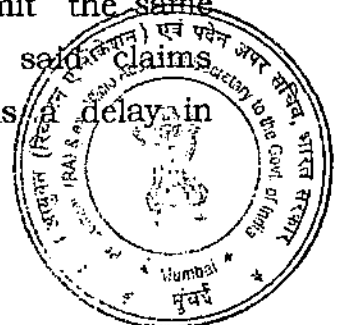
SUB : CENTRAL EXCISE REBATE CLAIM REGD.

REF: YOUR LETTER NO. F.NO.SR./CROWN/REBATE/10/600/DTD. 15-06-2011.

We had submitted Rebate Claim on 30-04-2011 (A.R.E. NO. 059/19-01-2011 & 061/28-01-2011). As Description and Quantity in Shipping Bill are not clear, we desire to withdraw the rebate claim files to enable us to resubmit the same after correction.

We, therefore, request you to please handover the files to our representative.

13. From the aforesaid contents, Government observes that the respondent desired to withdraw the rebate claims files in view of the Range Superintendent's letter dated 15-06-2011, in order to resubmit the same after correction. The respondent while resubmitting the said claims mentioned in their letter dated 15.06.2012 that there was a delay in



submission of documents as they had to obtain the documents from the exporter for rectification of the discrepancies.

14. In view of the foregoing, Government is in full agreement with the observations of Commissioner (Appeals) that the claims received on 03-07-2012 were in continuation of the claims received in the office of Assistant Commissioner on 10-05-2011.

15. Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court Tribunal and GOI, have held in following cases that original refund/rebate claim filed 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.

In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held 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 under section 11B of Central Excise Act, 1944."

Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

"claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962."

In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 (2016 (333) E.L.T. 246 (Guj.)], wherein the petitioner had submitted the rebate claim in time although, in



wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court of Gujrat in its Order dated 17.12.2015, observed that

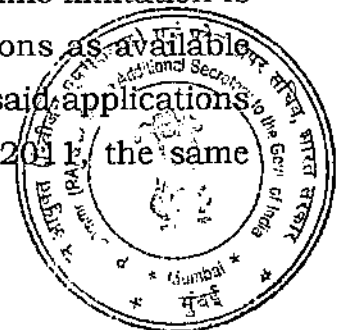
Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act. Under the circumstances, without going into the question whether such limitation would apply to rebate claims at all or not, the Department is directed to examine the rebate claims of the petitioner on merits. For such purpose, revisional order and all the orders confirmed by the revisional order are set aside. The Department shall process and decide rebate claims in accordance with Rules.

17. Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.

18. Applying the ratio of the afore stated judgement, Government holds that rebate claims filed by the respondent are made within period of one year and hence are not barred by limitation under Section 11B of the Central Excise Act, 1944.

19. In view of foregoing discussions, it is quite clear that time limitation is to be computed from the initial date of filing such applications as available in relevant office records. Government holds that, since the said applications are initially filed within stipulated time limit i.e. on 10.05.2011, the same

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are to be treated as filed in time. The applications are to be decided on merit in accordance with law treating the same as filed in time. In view of above position, case is required to be remanded back for fresh consideration.

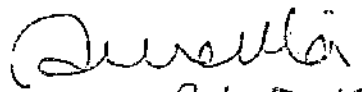
20. Government, keeping in view the discussion made in the foregoing paras, finds the impugned Order-in-Appeal as legal and proper and therefore upholds the same. Government remands back the case to original authority to decide the same afresh, after due verifications of documents. The original adjudicating authority shall pass the order within eight weeks from the receipt of this order.

21. The revision application is dismissed being devoid of any merit and impugned Order in Appeal is upheld as legal and proper.

22. So ordered.

True Copy Attested


28-5-18
एस. आर. हिरुलकर
S. R. HIRULKAR
(A.O)


21.5.18
(ASHOK KUMAR MEHTA)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

To,
The Commissioner of CGST, GST Bhavan,
Kolhapur.

ORDER No. 158/2018-CX(WZ)/ASRA/MUMBAI DATED 21.05.2018.
Copy to:

1. The Commissioner of CGST (Appeals-I), GST Bhavan, ICE House, Opp. Wadia College, Pune 411 001.
2. M/s Crown Industries 188-191, Vasantdada Ind. Estate, Sangli, Dist. Sangli, Pin- 416 503
3. The Assistant Commissioner, CGST Division IV, Sangli Miraj Road, At Miraj-416410
4. Sr. P.S. to AS (RA), Mumbai
- ✓ 5. Guard file
6. Spare Copy.

