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**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.195/213/WZ/2019 | 1652

Date of Issue: 20.03.2023

ORDER NO. 159 /2023-CX (WZ) /ASRA/Mumbai DATED 17.03.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

- Applicant : M/s Honeywell Automation India Limited,
DTA Unit, Gate No.181, Plot No.03,
Block B, Village Fulgaon, Tal. Havli,
Dist. Pune - 412 216.
- Respondent : Pr. Commissioner of CGST & Central Excise, Pune - 1
Commissionerate.
- Subject : Revision Application filed under Section 35 EE of the Central
Excise Act, 1944 against the Order-in-Appeal No.PUN-
EXCUS-001-APP-644/18-19 dated 12.02.2019 passed by
Commissioner (Appeals -I), Central Tax, Pune.

ORDER

The subject Revision Application has been filed by M/s Honeywell Automation India Limited (here-in-after referred to as 'the applicant') against the subject Order-in-Appeal dated 12.02.2019 which decided an appeal by the applicant against the Order-in-Original dated 01.10.2018 passed by the Assistant Commissioner, Central Tax, Division - V, (Viman Nagar), Pune - I.

2. Brief facts of the case are that the applicant, a manufacturer registered under Central Excise, had filed a rebate claim for Rs.12,74,987/- on 19.06.2018 with respect to goods exported by them vide ARE-1s dated 07.06.2017 and 02.06.2017. The original authority found that the first export was on 15.06.2017 and hence rejected the entire rebate claim on the grounds that the same was time barred as it was not filed before the expiry of one year from the relevant date in terms of Section 11B of the Central Excise Act, 1944. Aggrieved, the applicant filed appeal before the Commissioner (Appeals) who held that the 'relevant date' would be the date of the 'Let Export Order'. On examination of the two Shipping Bills in question, the Commissioner (Appeals) found that the date of the 'Let Export Order' appearing in the Shipping Bill No.6749295 was '21.06.2017' and that in Shipping Bill No.6750113 was '19.06.2017'. Accordingly, the Commissioner (Appcals) held that the applicant, having filed their rebate claim on 19.06.2017, would be eligible to the rebate claimed with respect to the Shipping Bill having 'Let Export Order' date 21.06.2017, however, he rejected the rebate claim with respect to the Shipping Bill having LEO date 19.06.2017 on the grounds that the same was filed beyond the period of one year from the relevant date prescribed by Section 11B of the Central Excise Act, 1944.

3.1 Aggrieved by the impugned said Order-in-Appeal dated 12.02.2019, the applicant has filed the subject Revision Application on the following grounds:-

(a) That out of the total claim of Rs.12,74,987/-, the Commissioner (Appeals) had rejected rebate claim amounting to Rs.9,11,053/- on the grounds that refund provisions are governed by the provisions of Section 11B of the Central Excise Act, 1944 and not by the General Clauses Act, 1897 (GCA, 1897); that the GCA, 1897 was enacted on March 11, 1897 and the general definitions provided under this shall be applicable to all Central Acts and Regulations where there is no definition in the Act that conflicts with the provisions of the Central Acts or regulations;

(b) That as per Section 9 of the GCA, 1897, the relevant date should be excluded while computing the limitation period; that in the present case the relevant date i.e. the LET date 19.06.2017 should be excluded while computing the period of one year, thus period of one year will start on 20.06.2017 and will end on 19.06.2018; and hence the rebate claim filed by them on 19.06.2018 was well within the prescribed time limit;

(c) That in terms of Section 9(2) of GCA, 1897, the provisions of GCA, 1897 will be applicable to the Customs Act, 1965 and the Central Excise Act, 1944;

(d) That Section 12 of the Limitation Act is also applicable to the present case which states that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded; and hence the rebate claim been filed well within the time limit prescribed;

(e) Reliance was placed on the following decisions in support of the above arguments: -

- Sarvamangal Synthetics vs CCE, Coimbatore [2003 (153) ELT 545 (Tri Chennai)]
- CCE, Meerut – II vs Rollatainers Limited [2002 (144) ELT 649 (Tri-Del)]
- LML Ltd vs CCE, Kanpur [2003 (152) ELT 375 (Tri-Del)]
- JBA Printing Inks Limited vs CC, Bombay [1986 (25) ELT 551 (Trb)];

(f) That in the absence of any prescription in the scheme of rebate regarding time limit, the rejection of their rebate claim for being time barred was unjustified and placed reliance on the case of D.C., CEx., Chennai vs Dorcas Market Makers P. Ltd [2015 (321) ELT 45 (Mad.)] and a few other decisions, in support of their argument on this count.

In view of the above, the applicant prayed that the impugned Order-in-Appeal be set aside and their rebate claim be allowed with consequential relief.

3.2 The applicant also filed an application for Condonation of the Delay in filing the present Revision Application. They submitted that –

(i) They had received the impugned Order-in-Appeal dated 12.02.2019 on 19.09.2019 and had filed the subject Revision Application on 27.05.2019, and hence there was a delay of six days in filing the subject Revision Application;

(ii) That the concerned clerk looking after the inward/outward had misplaced the copy of the Order and had failed to make an entry in the inward register due to which the said matter was overlooked; that the said Order was then found during the management and maintenance of the files conducted after two and half months and that they had handed it over immediately to their Consultant to draft the appeal;

(iii) That due to the delay in filing of the subject Revision Application was due to the above-mentioned unavoidable circumstances and that there was no intentional delay and hence requested that marginal delay of six days be condoned.

4. Personal hearing in the matter was held on 10.01.2023 and Shri Ashok Nawal, Cost Accountant, appeared on behalf of the applicant and

submitted that the issue is in a narrow compass. He submitted that while counting time limit of one year, the day of the Let Export Order should be excluded as per the General Clauses Act, 1897. He submitted additional written submission which consisted of copies of decisions which they had relied upon in their written submissions along with copies of the relevant Shipping Bills and screenshots of the ICEGATE portal reflecting the LEO date.

5. Government has carefully gone through the relevant case records, the written and oral submission and also perused the said Order-in-Original and the impugned Order-in-Appeal. Government finds that there is delay of six days in filing of the subject Application, however, given the reasons put forth by the applicant Government condones the said delay and proceeds to decide the same on merits.

6. Government finds that the only issue for decision here is whether the rebate claim filed on 19.06.2018, with respect to the consignment exported vide Shipping Bill No.6750113 having Let Export Order date as 19.06.2017, is time barred or otherwise. Government finds that the Commissioner (Appeals) has held that the refund/rebate provisions are governed by Section 11B of the Central Excise Act, 1944 and hence Section 9 of the General Clauses Act, 1897 would not be applicable here. In this context, Government finds that the General Clauses Act, 1897 is still in force and hence finds that it pertinent to examine Section 9 of the same before proceeding any further; the relevant portion is reproduced below: -

"9. Commencement and termination of time.—(1) In any 1 [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to". (2) This section applies also to all 2 [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

[emphasis supplied]

A reading of the above indicates that the above provision of the General Clauses Act, 1897 will be applicable to all Central Acts and Regulations made after the commencement of the said Act and hence Government finds that the Central Excise Act, 1944 having come into effect after the General Clauses Act, 1897, the provisions contained in Section 9 of the same will be applicable to the instant case too. Further, Government notes that Section 9 of the General Clauses Act, 1897 clearly states that while computing the commencement of a time period involving a series of days indicated by the word 'from' in any Central Act or regulation, the first day shall be excluded while computing such period. Government notes that Section 11B of the Central Excise Act, 1944 states that a refund/ rebate application should be made '*before the expiry of one year from the relevant date*', in this case the relevant date being the date on which the Let Export Order was given. Given the above, Government finds force in the submission of the applicant that the Let Export Order in the case Shipping Bill No.6750113 having been given on 19.06.2017, the first day i.e. 19.06.2017, has to be excluded while computing the period of one year specified by Section 11B of the Central Excise Act, 1944. Thus, Government finds that the one year period when computed from 20.06.2017 onwards, will expire on 19.06.2017 and hence the rebate claim filed by the applicant on 19.06.2017 will be within the time limit prescribed by Section 11B of the Central Excise Act, 1944 and accordingly holds so. Government finds that the Commissioner (Appeals) erred in holding that the rebate claim in respect of the Shipping Bill Shipping Bill No.6750113 was time barred and sets aside the portion of the impugned Order-in-Appeal holding so.

7. Government finds that the Commissioner (Appeals) has recorded that the basic facts of the rebate claim are not in dispute. The only ground of rejection was that the rebate claim pertaining to a Shipping Bill, as detailed above, was found to be time barred, which has now been found to be

incorrect. In view of the same, Government finds that the applicant will be eligible to the entire amount of rebate claimed by them vide the claim in question and accordingly holds so.

8. The subject Revision Application is allowed.


17/3/23
(SHRAWAN KUMAR)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No. 139/2023-CX (WZ) /ASRA/Mumbai dated 17.03.2023

To,

M/s Honeywell Automation India Limited,
DTA Unit, Gate No.181, Plot No.03,
Block B, Village Fulgaon, Tal. Havli,
Dist. Pune - 412 216.

Copy to:

1. Pr. Commissioner of CGST & C.Ex., Pune - I, GST Bhavan, ICE House, Opp. Wadia College, Pune - 411 001.
2. Commissioner of Central Tax (Appeals-I), Pune, 41/A, F-Wing, 3rd floor, GST Bhavan, Sassoon Road, Pune - 411 001.
3. Sr. P.S. to AS (RA), Mumbai.
4. Notice Board.