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F.No. 195/539-540/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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Date of Issue 4/12/12

ORDER NO. 1643-1644 /12-Cx DATED 04-12-2012 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 Act, 1944 against The Order-In-Appeal No. 98-99 (DKV)CE/JPR-I/2011 dated 15.03.2011 passed by the Commissioner Customs & Central Excise (Appeals-I), Jaipur
APPLICANT	:	M/s Mittal Pigments Pvt. Ltd., Kota, Rajasthan
RESPONDENT	:	The Commissioner of Central Excise, Customs & Central Excise, Jaipur-I.

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ORDER

These revision applications have been filed by M/s Mittal Pigments Pvt. Ltd., Kota, Rajasthan against the Order-in-Appeal No. 98-99 (DKV)CE/JPR-I/2011 dated 15.03.2011 passed by the Commissioner Customs & Central Excise (Appeals-I), Jaipur with respect to order-in-original passed by the Assistant Commissioner, Central Excise, Kota.

2. Brief facts of the case are that the Applicant are engaged in the manufacture of Metallic Stearates, Zince Oxide & Lead Oxide . The applicant had filed a refund claim of Rs. 4,27,855/- on the ground that they had debited the amount in their Cenvat account under a wrong impression. The said credit was reversed vide RG-23A Part-II Entry and on their request the Superintendent, Central Excise Range-III, Kota issued a duty reversal certificate. The applicant then filed a claim with the DGFT in respect of duty paid on raw material used for manufacture of export goods but the DGFT did not entertain the claim and returned the original certificate issued by the Superintendent, Central Excise Range-III, Kota. The applicant had then filed the refund claim stating that they were entitled for Cenvat Credit of duties paid through the said B/E. It was further observed that the applicant have reversed the Cenvat Credit and filed the refund claim after expiry of one year. Therefore, the refund claim appeared to be barred by the limitation of the time prescribed under Section 11B of the Central Excise Act,1944 and is liable to be rejected. The original authority rejected refund claim of the applicant.

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 orders-in-appeal, the applicant has filed these revision applications under Section 35EE of Central excise Act, 1944 before Central Government mainly on following grounds :

4.1 The Commissioner (Appeals) has erred in holding that the refund claim is hit by limitation. He has not passed any order on the argument advanced before him that the limitation prescribed in Section 11B is for the refund of duty of Central Excise and/or interest paid thereon. He has not passed any order on the argument that the request for refund is only for restoration of credit which was reversed under a wrong impression that the applicant is entitled for refund of Terminal Excise Duty (TED)/DBK and therefore, the said credit was reversed and now the request is for permission to restore the credit was filed in the form of refund claim. Infact, it is not a request for refund of Central Excise Duty paid on any goods or interest paid on any duty paid wrongly/in excess under any impression. Therefore, the decision of Commissioner (Appeals) is non-speaking and not tenable in law. Therefore, deserves to be quashed.

4.2 The Commissioner (Appeals) has erred in ignoring the decisions cited by the applicant, instead, the Commissioner (Appeals) have relied upon decision which is prior to the decision than the decisions relied upon by the applicant, the other decision relied upon by the Commissioner (Appeals) in the matter of BDH IND. LTD., Vs. CCE- 2008(229) ELT 364(Tri.LB) is not relevant as the applicant has already mentioned that the claim has been filed in order to get permission/consent to take credit instead of taking suo-moto credit. As for as question of unjust enrichment is concerned, it was submitted that the restoration of credit sought pertained to the credit of duty paid on inputs used in or in relation to manufacture of export goods, therefore, the provisions of unjust enrichment are not applicable in the instant case. Thus, the decision of Commissioner (Appeals) deserves to be quashed and application deservers to be allowed.

5. Personal hearing scheduled in this case on 10.10.2012 was attended by Shri Vijai Kumar, advocate on behalf of the applicant who reiterated the grounds of Revision Application. Nobody attended Personal Hearing on behalf of the respondent. The applicant also submitted their written reply dated 10.10.2012 and 20.10.2012, wherein they mainly reiterated ground of revision application. The applicant in his written submission dated 20.10.2012 has contended that the refund of Cenvat Credit in question is rebate of Central Excise duty paid on inputs used in the manufacture of goods exported under bond and therefore the case falls in the jurisdiction of Central Government in terms of section 35EE of Central Excise Act 1944.

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 applicant cleared the goods to a 100% EOU against CT-3 under Rule 19 of Central Excise Rules, 2002. The applicant paid duty on inputs imported by them and availed Cenvat Credit against payment such of duty paid at the time of import. They reversed this cenvat credit in RG-23A Part-II Entry on 23.12.2008 and they claimed refund of such reversed credit. However, they filed refund claim only on 30.04.2010, i.e. after expiry of one year with the proper authority. Adjudicating authority vide impugned Order-in-Original, rejected the refund claim on the ground that the same has been filed after stipulated one year. Commissioner (Appeals) rejected the appeal filed by the applicant. Now, applicant has filed these revision applications on ground mentioned in para (4) above.

8. The applicant is claiming that their claim is infact not a refund claims in terms of Section 11B of Central Excise Act, 1944, but a case of restoration of Cenvat Credit reversed by then in RG-23A-Part-II register under the impression

that they were entitled to refund of duty paid on raw materials used for manufacture of export of goods to 100% EOU. Government finds that in the instant case the applicant initially got Cenvat Credit of duty paid on inputs at the time of import, however, they subsequently reversed such Cenvat Credit. Payment of such Cenvat Credit should be treated as erroneously paid duty and hence, refund of such erroneous payment will fall under ambit of the section 11B of the Central Excise Act, 1944. The Commissioner (Appeals) has upheld the rejection of said rebate claim on the ground of being time barred.

9. In this case, the issue involved is of refund/re-credit of wrongly debited Cenvat Credit under section 11B of Central Excise Act 1944, which is rejected as time barred. The issue of rebate of duty paid inputs used in manufacture of exported goods under Rule 18 of the Central Excise Rules, 2002 in terms of Notification No. 21/2004 -CE (NT) dated 21.09.2004 was not before the lower authorities. The applicant when asked to explain during hearing on how in this case jurisdiction lies before Joint Secretary (R.A.) since it is case refund of Cenvat Credit. Applicant in his written submission dated 20.10.2012, made a claim that it is infact a rebate claim of duty paid on inputs used in manufacture of exported goods. Government observes that issue of refund/re-credit of Cenvat Credit does not fall in the jurisdiction of Central Government under section 35EE on the said issue is not of the nature referred to in the first proviso to sub section (1) of section 35B of Central Excise Act 1944. Therefore, revision application is not maintainable andisliable to be rejected on this ground alone.

10. Applicant has now contended that it is input rebate claim under Rule 18 of the Central Excise Rules, 2002 so it fall in the jurisdiction of Central Government under section 35EE. In this regard Government notes that no such claim was made by applicant before lower authorities. At the same time the conditions/procedure prescribed under Notification No. 21/2004 -CE (NT) dated

06.09.2004 is not followed by applicant. The rebate claim is also required to be filed within one year the export of goods. In this case refund claim filed after one year is already rejected as time barred. The rebate claim also filed after one year being time barred can not be entertained.

11. Government observes that in below mentioned judgments, the refund claim filed after one year time limit stipulated in section 11B of Central Excise Act, 1944 was held as rightly rejected being time barred.

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 clam 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."

Since, the rebate claim is also a form of refund, ratio of the said judgement is applicable to this case also.

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.

11.4 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 a matter of rebate claim, 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 din 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."

11.6 In view of above position, the refund claims filed after stipulated time limit of one year being time barred in terms of section 11B of Central Excise Act, 1944 is also liable to be rejected as time barred.

12. In view of above discussion, the revision application is not maintainable and therefore rejected.

13. So, ordered.

(D.P. Singh)
(Joint Secretary to the Government of India)

M/s Mittal Pigments Pvt. Ltd., A-203,
IPIA, Road No.-5, Kota, Rajasthan

(Attested)

(भागवत शर्मा/Bhagwat Sharma)
सहायक आयुक्त/Assistant Commissioner
CBEC-OSD (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revn)
भारत सरकार/Govt of India
नई दिल्ली / New Delhi

Order No. 1643-1644 /12-Cx dated 04.12.2012

Copy to:-

1. The Commissioner of Central Excise, Customs & Central Excise, N.C.R. Building, Statue Circle, C-Scheme, Jaipur – 302 005.
2. The Commissioner (Appeals-I), Customs & Central Excise, N.C.R. Building, Statue Circle, C-Scheme, Jaipur – 302 005.
3. The Assistant Commissioner, Central Excise Division, Near Cad Circle, Kota (Rajasthan)
4. Shri Vijai Kumar (Advocates) C-2/2329, Vasant Kunj, New Delhi-110070.
5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

(Bhagwat P. Sharma)
OSD (Revision Application)