



REGISTERED  
SPEED POST

F.No. 195/30/11-RA-Cx  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING  
6<sup>th</sup> FLOOR, BHIKAJI CAMA PLACE,  
NEW DELHI-110 066

Date of Issue...11/12/12.....

ORDER NO. 1746/12-Cx DATED 10-12-2012 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** : ORDER IN REVISION APPLICATION FILED,  
UNDER SECTION 35 EE OF THE CENTRAL EXCISE  
ACT, 1944 AGAINST THE ORDER-IN-APPEAL No.  
137/CE/DLH/10 dated 05.08.2010 passed by  
the Commissioner of Central Excise (Appeals) Delhi-I

**APPLICANT** : M/s Saurabh Steel Udyog, Delhi.

**RESPONDENT** : The Commissioner, Central Excise, Delhi-I, C.R.  
Building, New Delhi.

\*\*\*\*\*

**ORDER**

This revision application has been filed by M/s Saurabh Steel Udyog, Delhi, against the order-in-appeal No. 137/CE/DLH/10 dated 05.08.2010 passed by the Commissioner of Central Excise (Appeals) Delhi-I, with respect to Order-in-Original passed by the Deputy Commissioner of Central Excise, Division-IV, Central Excise Commissionerate, Delhi-I.

2. Brief facts of the case are that the Applicant, M/s Saurabh Steel Udyog, New Delhi filed the rebate claim for Rs. 2,57,034/- on 19.04.2007 under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 21/2004 -CE (NT) dated 06.09.2004 of the Central Excise duty paid on the inputs used in the manufacture of S.S. Utensils, which were exported out of India. Subsequently they came to know that due to inadvertence they took back the original documents filed with the claim which were however re-submitted. They also produced a photocopy of the dated acknowledgement as the proof of filing of rebate claim on 19.04.2007. The original authority observed that the applicants submitted original documents after two years and shall be treated as time barred. Accordingly, vide impugned Order-in-Original, the original authority rejected 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 mainly on following grounds:-

4.1 The claim for rebate was duly filed on April 19, 2007. The covering letter which has dated acknowledgement as proof of filing of rebate claim on April 19.04.2007, was also produced before the Commissioner (Appeals). The applicant submit that inadvertently, the original documents were attached to the

office copy of the rebate claim and, therefore, remained with the assessee. It was only later on that this fact was noticed by them. The applicant submits that claim was filed well within the period of limitation i.e. one year. The Commissioner (Appeals) in the impugned order has given a finding that date of filing of rebate claim on 19.04.2007 cannot be treated as date of filing of rebate claim in terms of Section 11B as the same was without the requisite documents and therefore the claim was time barred. In this regard applicants submit that this finding of the Commissioner (Appeals) is completely erroneous in light of the decision of Hon'ble High Court of Delhi in the case of CCE, Delhi-I Vs. Arya Export and Industries – 2005(192) ELT 89 (Del.). In the said decision it has been held that for the purpose of limitation under Section 11B, date of filing claim is the date on which claim was filed initially in form not prescribed or without document. The applicants submit that in the case of A Tosh and Sons Pvt. Ltd. Vs. Assistant Collector, Central Excise – 1992 (60) ELT 220 (Cal.), Hon'ble Calcutta High Court has held that if claim for rebate of duty is made within limitation period but necessary documents not incorporated with claim but produced subsequent to the said period then the rebate claim is admissible.

4.2 The applicants submit that the Deputy Commissioner in the Order-in-Original had held that since the original copy of documents (i.e. ARE-2) was not attached to the claim, it is barred by limitation. In this regard the applicants had submitted that the ARE-2 is prepared in 5 sets and the triplicate copy of the ARE-2 was available with the Department. Therefore, there was no basis for rejection of the claim for want of original documents. The applicants submit that the Commissioner (Appeals) has not given any finding in this regard.

4.3 The applicant submits that if the claim filed was defective for want of original documents, a defect memo should have been issued at the earliest. However, the applicant did not receive any communication from the Department, inspite of filing the claim for rebate. Therefore, rejection of rebate claim is totally

unjustified. In this regard, we rely upon the decision of Hindustan Sanitaryware & Industries Ltd. Vs. CC, Kolkotta – 2004(168) ELT 243 (Tri., Kolkata).

5. Personal hearing scheduled in this case on 07.08.2012 and 09.10.2012/ 11.10.2012. Hearing was attended by Ms. Reena Khair, advocate on 11.10.2012 on behalf of the Applicant who re-iterated the grounds of Revision Application. The department vide their written submission C.No. CE-13/Demand/SSU/R 19/08/2010/3076 dated 21.09.2011 mainly re-iterated contents of impugned orders.

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 initially filed said rebate claim on 19.04.2007. Subsequently, they came to know that they inadvertently took back the original documents with them. These documents were resubmitted by them along with a photocopy of dated acknowledgement as a proof of filing of rebate claim initially on 19.04.2007. The original authority rejected the rebate claim as time barred by observing that the applicants submitted original documents after two years and as such shall be treated as time barred. Commissioner (Appeals) rejected appeal of the applicant. Now, applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government observes that the applicant initially filed rebate claim on 19.04.2007 and there is no dispute about it. The applicant inadvertently took back original documents with them. Government finds that the department did not issue any discrepancy memo calling original documents. When the applicant resubmitted original documents of impugned case along with dated acknowledgment of rebate claim having filed on 19.04.2007, the department raised the issue of time bar. 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 and CESTA Tribunal, 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.

- (i) CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur Vs. Bhandiguri Tea Estate 2001(134) ELT 116 (T. Kol.)
- (iv) Good Year India Ltd. Vs.CCE Delhi 2002 (150) ELT 331 (T.Del)
- (v) CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

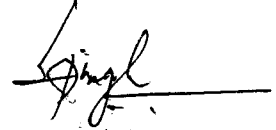
Government of India has also held in a case of M/s IOC Ltd. reported as 2007(220) ELT 609 (GOI) as under:-

“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 remaining defects was submitted section 11B of Central Excise Act, 1944.”

In view of above, the said rebate claim cannot be treated as time barred since it was originally filed before department on 19.04.2007 which was well within the limit period of one year stipulated in section 11B of Central Excise Act, 1944. Government is of considered view that case is required to be remanded back for denovo consideration, for deciding the case on merits.

10. In view of above circumstances, Government sets aside the impugned orders and remands the case back to original authority to decide the case on merits. A reasonable opportunity of hearing will be afforded to the parties concerned.

11. Revision Application is disposed off in above term.
12. So, ordered.



(D.P. SINGH)

JOINT SECRETARY TO THE GOVT. OF INDIA

M/s Saurabh Steel Udyog,  
A-38, Wazirpur Industrial Area,  
Delhi - 110052.

(ATTESTED)

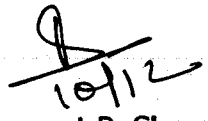


(भागवत शर्मा/Bhagwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
C.B.E.C.-O.S.D. (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Revenue)  
भारत सरकार/Govt. of India  
नई दिल्ली / New Delhi

Order No.1746/12-Cx dated 10-12-2012

Copy to:-

1. The Commissioner, Central Excise, Delhi-I, C.R. Building, New Delhi.
2. The Commissioner of Central Excise (Appeals), Delhi-I, C.R. Building, I.P. Estate, New Delhi.
3. Deputy Commissioner of Central Excise, Division-IV, 12, Gangandeeep Building, Rajendra Place, New Delhi.
4. Ms. Reena Khair, Advocate, R-163, 2<sup>nd</sup> Floor, G.K. Part-I, New Delhi 110048.
- ✓ 5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.

  
(Bhagwat P. Sharma)  
OSD-I (Revision Application)

