

**REGISTERED
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**F.No. 198/209/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)**

**14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066**

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

**ORDER NO. 1749/12-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 : REVISION APPLICATION FILED UNDER SECTION 35
EE OF THE CENTRAL EXCISE ACT, 1944 AGAINST THE
ORDER-IN-APPEAL No. M-I/AV/304/2010 dated 27.10.2010
PASSED BY COMMISSIONER OF CENTRAL EXCISE
(APPEALS), MUMBAI-I.**

APPLICANT : Commissioner of Central Excise, Mumbai-I

RESPONDENT : M/s Nicholas Piramal (I) Ltd., Mumbai.

ORDER

This revision application is filed by the applicant Commissioner of Central Excise, Mumbai-I against the order-in-appeal No. M-I/AV/304/2010 dated 27.10.2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-I with respect to order-in-original No. K-II/413-R/2007(MTC) dated 11.07.07 passed by Assistant Commissioner(Rebate), Central Excise, Mumbai-IV.

2. Brief facts of the case are that the respondent filed rebate claims for Rs. 1,67,084/- on 17.05.2005 and Rs. 6,90,267/- on 25.07.2005 in respect of the goods exported in September 2004. The said claims were returned to the respondents on 20.09.2005 for necessary compliance and resubmission which were resubmitted on 16.04.2007. As per Section 11B read with Notification No. 19/2004-CE(NT) dated 06.09.2004, the person claiming refund of any duty of excise shall make an application for refund of duty before the expiry of one year from the relevant date which in terms of 11B(5)(b) in case of goods exported is the date on which the ship/aircraft in which such goods are loaded leaves India. As such, the applicants were issued Show Cause Notice dated 29.05.2007 seeking to reject the claims amounting to Rs. 8,57,151/- being barred by limitation in terms of Section 11B. The adjudicating authority vide Order-in-Original dated 11.7.2007 rejected both the rebate claims.

3. Being aggrieved with the said Order-in-Original, respondent filed appeal before Commissioner of Central Excise (Appeals), who after due consideration of submissions, allowed the appeal and aside the Order-in-Original.

4. Being aggrieved by the impugned order-in-appeal, the applicant department filed this revision application under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds :

4.1 The para 6 of the Order-in-Appeal is as under:-

" I find that the rebate claimed by the respondents was originally filed on 07.05.2005 and 25.07.2005 in respect of ARE No.s 24 and 25 both dated 08.09.2004. The claim initially therefore was well within the limitation of one year as laid down under Section 11B. The findings of the adjudicating authority therefore that the claim was time barred are entirely incorrect. If the respondents had not filed legible documents, the remedy would have been to issue to Show Cause Notice to the respondents after following the principle of natural justice and then take a final decision. The date of filing claim cannot be changed merely because the respondents have failed to file the legible documentation in time. The impugned order therefore is set aside and remanded back to the adjudicating authority for considering the claim of rebate of the respondents, as having been filed in time and to decide the same on merits. "

The Order of Commissioner (Appeals) is contrary to the provisions of section 35A(3) of the Central Excise Act, 1944. Consequent to the amendment to the said provisions brought about vide Finance Act, 2001, that came into effect from 11.05.2001, the power to remand the case to the adjudicating authority for a fresh consideration stands withdrawn.

4.2 CBEC has also clarified vide instruction issued under F.No. 275/34/2006-CX.8A dated 18.02.2010, that the Commissioner (Appeals) do not have the power to remand and is bound to decide the case finally after necessary enquiry at the level.

4.3 The Commissioner (Appeals) should have decided the case finally as he does not have statutory power to remand. Therefore, Commissioner (Appeals) has erred by remanding the case, and his Order-in-Appeal deserves to be appealed against.

5. Personal hearing scheduled in the case on 11.10.2012 was attended by Shri Manoj Chauhan, Chartered Accountant and Shri Archit Agarwal, on behalf of the respondent and submitted that Commissioner has held the claim filed in time and this finding is not challenged by department. As such they requested to uphold the impugned Order-in- Appeal.

6. Government has carefully gone through the relevant case records and perused the impugned Orders-in-Original and Orders-in-Appeal.

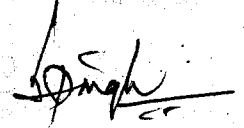
7. On perusal of records, Government notes that the said rebate claim were initially filed on 17-05-2005 and 25-07-2005 in respect of goods exported on September 2004 vide ARE-I No. 24 & 25 with dated 08-09-2004. The respondent has filed the said claim within prescribed time limit of one year as stipulates in section 11B of Central Excise Act, 1944 alongwith all the requisite documents.

7.1 During scrutiny of claims department found that copy of Shipping Bill was not legible and therefore returned the claims to respondent on 20-09-2005. However, claimant resubmitted the claims again 16-04-2007. Commissioner (Appeals) has held that rebate claims were initially filed within one year along with all the requisite documents and department could have issued deficiency Memo/Show Cause Notice for calling for legible copy of Shipping Bill rather than returning the claims. As such the claims were held to be filed in time.

7.2 Government notes that department has accepted the said finding of the Commissioner (Appeals) but contested the said order on the ground that Commissioner (Appeals) has not remand power after 2001. In this regard, Government observes that once rebate claim are held to be filed in time, the original authority is in a position to sanction it if found in order on the case file is available with him. So, there is no point in remitting the case back to Commissioner (Appeals). There^{fore}, in the interest of justice, Government ~~directs~~ the original authority to sanction the said rebate claims treating them filed in time if otherwise found in order in accordance with law. The impugned Order-in-Appeal is upheld with said modification.

8. The revision application is disposed off in terms of above.

9. So, ordered.

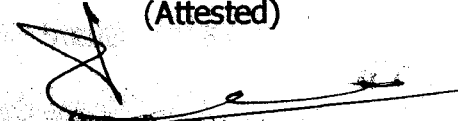


(D.P. Singh)

(Joint Secretary to the Government of India)

The Commissioner of Central Excise,
Mumbai-I, 115 Kendriya Utpad Shulk Bhavan,
Maharishi Karve Road, Mumbai – 400020.

(Attested)



रामेश चंद्र शर्मा/R.C. SHARMA
उपायुक्त/Dy Commissioner
C.B.E.C.-OSD to Jt. Secy (R.A.)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Rev.)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

G.O.I. Order No. 1749/12-Cx dated 10/12-2012

Copy to:-

1. Commissioner of Central Excise (Appeals), Mumbai Zone-I, Meher Building, Dadi Seth Lane, Chowpatty, Mumbai- 400 007.
2. The Assistant Commissioner (Rebate), Central Excise, Mumbai-IV, , 2nd Floor, Dharavi, Estarella Battery Compound, Mumbai – 400019.
3. M/s Nicholas Piramal India Ltd., Nicholas Piramal Tower, GK Marg, Lower Parel, Mumbai 13.
4. Sh. Manoj Chauhan/Shri Archit Agarwal, Chartered Accountant, 102-106, 'A' Wing, 1st Floor, Zaitoon Apartment, Opp. Municipal School 182, Station Road, Goregaon (W), Mumbai 400062.
- ✓ 5. PS to JS(Revision Application)
6. Guard File
7. Spare Copy.


(R.C. SHARMA)
OSD (Revision Application)