

**REGISTERED  
SPEED POST**

F.No.195/410/11-RA  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue...19/12/12

Order No. 1767/2012-CX dated 18-12-2012 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 order-in-appeal No. M-I/RKS/39/2011 dated 1.02.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-I.

Applicant : M/s Tata Motors Ltd. (formerly M/s Tata Engineering and Locomotive Co. Ltd.),  
Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-I

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**ORDER**

This revision application is filed by the applicant M/s Tata Motors Ltd. (formerly M/s Tata Engineering and Locomotive Co. Ltd.), against order-in-appeal No. M-I/RKS/39/2011 dated 1.02.2011 passed by Commissioner of Central Excise (Appeals), Mumbai-I with respect to Order-in-Original No. 278/R/2005 dated 20.12.2005 passed by Assistant Commissioner (Rebate) Central Excise, Mumbai-I.

2. Briefly stated facts of the case are that M/s. Telco, Pune, the applicant originally cleared the goods for export under bond from the factory under eight AR4/AREs. However, these goods could not be exported due to cancellation of their export order and therefore, Central Excise duty amounting to Rs. 68307/- was paid vide TR6 challan dated 22-06-2000 and amounting Rs. 466239/- was paid through entry in RG 23 Pt. II. However, these goods were subsequently exported in 2003 under two ARE 1s on receipt of fresh export order, as per details tabulated below:

Sl. No.	Original AR4 Nos & dt. Under which goods were first cleared for export under bond	Dt. Of payment of duty after cancellation of export order of first export	ARE-1 No. & dt. Under which subsequent export took place	Shipping Bill No. & Dt.	Bill of landing and dt. Of shipment	Duty amount.
1.	34/AEPL/1998-99 Dt 06-07-1998	22-06-2000	02/18-02-2003	100003156/27-02-2003	MUM/MAT/23306/09-03-2003	68307/-
2.	MV/B7348 dt. 20-03-2000 MV/B7349 dt. 20-03-2000 MV/B7351 dt. 20-03-2000 MV/B1740 dt. 24-05-2000 MV/B1743 dt. 24-05-2000 MV/B1746 dt.	20-02-2002	01/27-01-2003	879688/27-01-2003	JHT C36099/28-02-2003	466239/-

24-05-2000 MV/B1829 dt. 27-05-2000						
					Total	534546/-

The rebate claims were initially sanctioned by the original authority vide impugned Order-in-Original.

3. The said order was reviewed by the Commissioner of Central Excise and department filed appeal before Commissioner (Appeals) on ground that assessee had exported the goods after expiry of more than two years from the date on which the goods were cleared from the factory and had failed to obtain the permission from the Commissioner, Central Excise, seeking extension for delay in export. After considering all the submissions, Commissioner (Appeals) set aside impugned Order-in-Original and allowed the appeal filed by the department.

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 on the following grounds:

4.1 The applicants submit that it is not in dispute in the instant case that – (i) the goods were exported; (ii) the applicable excise duty was paid on the goods; and (iii) the claim for rebate was filed within the stipulated time limit as per Section 11B of the Central Excise Act, 1944. Having regard to this undisputed factual position, the Applicants submit that the action of Commissioner (Appeals) to reject the rebate claims is not justified. Extension to export the vehicles was obtained and duty was paid before the extension is lapsed – and the goods were exported – rebate claim was also filed within stipulated period – the finding of Commissioner (Appeals) as to non-observance of conditions of Notification No.40/2001-CE (NT) dated 26.06.2001 and instructions in Board's Circular dated 30.01.1997 is factually not tenable.

4.2 For easy understanding the Applicants give below the status of extensions obtained, date of duty payment, date of physical export and date of filing of rebate claims.

For RC No.25235 dated 02.09.2003 for Rs.68,307/-

Model	AR3A No.& date	AR4 No. & dated	Extn I valid upto	Extn II valid upto	Extn III valid upto	Duty paid on	ARE1 No. & Date	Physically exported	Rebate claim file on
Tata 407/31 Cowli Bus	215 Dt.12.1.98	34/AEPL/ 1998-99 Dt.6.7.98	5.7.99	5.1.2000	5.7.2000	47/00-01/3 Dt 23.6.00	18.2.03	12.3.03	2.9.03

For RC No.25236 dated 02.09.2003 for Rs.4,66,239/-

Model	ARE1 No.	Extn I valid upto	Extn II valid upto	Extn III valid upto	Duty paid on	ARE1 No. & Date	Physically exported	Rebate claim file on
LPT709 E38 Tuck Chassis	MV/B 7348 Dt. 20.03.00	19.03.01	19.9.01	19.3.02	20.02.2002	27.1.03	10.3.03	2.9.03
LPT709 E38 Tuck Chassis	MV/B 7349 Dt. 20.03.00	19.03.01	19.9.01	19.3.02	20.02.2002	27.1.03	2.2.03	2.9.03
LPT709 E38 Tuck Chassis	MV/B 7351 Dt. 20.03.00	19.03.01	19.9.01	19.3.02	20.02.2002	27.1.03	10.3.03	2.9.03
LPT709 E38 Tuck Chassis	MV/B 1740 Dt. 24.05.00	23.05.01	23.11.01	23.5.02	20.02.2002	27.1.03	2.2.03	2.9.03
LPT709 E38 Tuck Chassis	MV/B 1743 Dt. 24.05.00	23.05.01	23.11.01	23.5.02	20.02.2002	27.1.03	10.3.03	2.9.03
LPT709 E38 Tuck Chassis	MV/B 1746 Dt. 24.05.00	23.05.01	23.11.01	23.5.02	20.02.2002	27.1.03	2.2.03	2.9.03
LPT709 E38 Tuck Chassis	MV/B 1829 Dt. 27.05.00	26.05.01	26.11.01	26.5.02	20.02.2002	27.1.03	10.3.03	2.9.03

4.3 The Applicants reiterate that since the export was not materializing they applied for and obtained extension for each of the above cases and before the extension could lapse, they paid excise duty. The Applicants submit that they fulfilled the conditions of Notification No.40/2001-CE (NT) dated 26.06.2001 and also instructions contained in Circular No.294/10/97-CX dated 30.01.1997.

4.4 After verifying the documents submitted by Applicants, the Range Superintendent inspected the said goods which were clearly identifiable with reference to their chassis and engine nos. and gave clearance for their export by signing fresh ARE-1 forms prepared by Applicants. Then the vehicles got physically exported. Therefore the Applicants submit that the allegation as to non-observation of the procedure is not tenable, especially when the SCN dated 07.03.2005 containing the allegation as to non-observance of procedure under Circular dated 30.01.1997 was set aside by the Asstt. Commissioner (Rebate).

4.5 In the Board's Circular dated 30.01.2007 it is mentioned that the goods should be exported within 6 months from the date when they were cleared from manufacturer's factory and the claim for rebate together with proof of due exportation is to be filed with the Assistant Commissioner before the expiry of period specified in Section 11B of the said Act. As per Section 11B (5)(B) of the said Act the relevant date for filing rebate claims in case of export of goods outside India is one year from the date on which ship or aircraft on which the goods are loaded leaves India. In the instant case, the rebate claims were filed well within this stipulated time. Therefore, the Applicants submit that the conditions of said Notification are fully met with and Board's instruction is also stands followed.

4.6 When the export order came for these goods, the Applicants prepared fresh ARE-1s by intimating the Range Superintendent and after physical inspection of goods by him. The bus/truck chassis being identifiable with reference to their chassis no. and engine no. and after being satisfied with the documentation, the Range Superintendent signed the fresh ARE-1s. The ARE-1s were prepared in January/February 2003 and the vehicles were physically exported in March 2003. Therefore, the Applicants respectfully submit that the finding of the Commissioner (Appeals) that the goods were not exported within 6 months of their clearance from factory or within extended period allowed by the

Department, is of no consequence and liable to be set aside being unsustainable.

4.7 The Applicants have placed reliance on the following decisions:

- (a) Harison Chemicals [2006 (200) ELT 171] – GOI
- (b) Shantilal & Bhansali [1991 (53) ELT 558-GOI]
- (c) Commissioner of Cus. & C.Ex., Nagpur [2006 9200) ELT 175) GOI
- (d) Birla VXL Ltd. V/s CCE, Chandigarh [1998 (99) ELT 387] – CESTAT, Delhi
- (e) Supreme Court in the case of MV "Vali Pero" V/s Fernandex Lopez and another (AIR 1989 SC 2206, 2212 – Para 18) wherein it has been held that
- (f) Chemiequip Ltd. V/s CCE [1984 (18) ELT 135] – hon'ble Tribunal, Mumbai
- (g) UOI V/s Suksha International & Nutan Gems [1989 (39) ELT 503].

5. Personal hearing scheduled in this case on 11.10.12 was attended by Shri Ganesh Bapu T.R., Advocate on behalf of applicant who reiterated the grounds of revision application. Nobody attended hearing on behalf of respondent department.

6. Government has carefully gone through the relevant case records and perused the impugned the impugned orders-in-original and orders-in-appeal.

7. Government observes that the applicant initially exported the goods under cover of 8 AR-4/ AREs in the year 1998 and 2000. Due to cancellation of order of export, they did not export the goods and paid applicable duty on such goods. On receipt of fresh export orders, they exported the goods on and filed rebate claim of duty paid in year 2002 under Rule 18 r/w the then existing Notification No. 40/2001-CE (NT). The original authority initially

sanctioned the rebate claim. The department reviewed the impugned Order-in-Original and filed appeal before Commissioner (Appeals) on the grounds that the applicant exported the goods after more than 2 years from the date on which the goods were cleared from factory and also that the applicant failed to obtain the extension from Jurisdictional Commissioner. Commissioner (Appeals) decided the case in favour of department. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that the applicant initially exported the goods covered vide 8 AR4/ARE's of year pertaining to 1998 and 2000 under bond without payment of duty. However, they failed export the goods within stipulated time/extended time and paid duty applicable on such goods vide TR-6 challan dated 22-06-2000 and also vide entry in RG 23 dt. II dated 22-06-2000. Subsequently, in 2003, after receiving fresh export orders, they cleared the goods. The applicant filed rebate claim of duty paid by them vide above said TR 6 challan and entry in RG 23 Pt. II, both dated 22-06-2000. Government finds that the said duty was paid by the applicant for the reasons of failure to export the goods under Bond. It cannot be claimed as rebate under rule 18 of Central Excise Rules 2002. However, applicant exported the goods subsequently and is claiming rebate.

9. In order to avail the rebate claim, there are two substantial conditions which are required to be complied with in term of rule 18 of Central Excise rules and the then exiting Notification No. 40/2001-CE (NT). First condition is removal of goods on payment of duty and second, is that such duty paid goods are exported within 6 months of their clearance for export from factory. In the instant case, goods are exported after lapse of 6 months period from the date of clearance of goods for export from factory. Applicant has not produced any valid permission from the competent authority to export said goods after 6 months. The applicant has violated the provisions of condition 2(b)

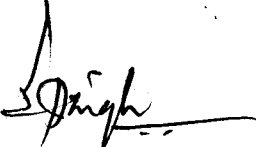
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of Notification No. 19/04-CE (NT) dt. 06-09-2004 and failed to make compliance of said mandatory condition. Therefore, the rebate claim is not admissible to the applicants under rule 18 of Central Excise Rules 2002 r/w Notification No. 19/04-CE (NT) dt. 06-09-2004.

10. In view of above position, Government finds no legal infirmity in the impugned Order-in-Appeal and therefore, upholds the same.

11. Revision Application is thus rejected being devoid of merit.

12. So, Ordered.



(D. P. Singh)

Joint Secretary(Revision Application)

M/s Tata Motors Ltd.  
(formerly M/s Tata Engineering and Locomotive Co. Ltd.),  
One India Bulls Centre,  
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Mumbai-400013)

ATTESTED

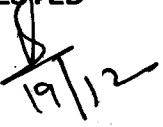


GOI Order No. 1767 /12-CX dated 18-12-2012

Copy to:

1. Commissioner of Central excise, Mumbai-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400007.
2. Commissioner (Appeals), Central Excise Mumbai-I, Meher Building, Bombay Garage, Dadishet Lane, Chowpatty, Mumbai-400007
3. The Assistant Commissioner of Central Excise, Mumbai-1 Commissionerate.
4. Shree Ganesh Bapu, advocate, B-6/10, Safdarjung Enclave, New Delhi-110029.
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

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(भागवत शर्मा/Bhogwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev)  
भारत सरकार/Govt of India  
नई दिल्ली/NEW DELHI

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