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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.198/06/WZ/2018-RA/2002

Date of Issue: 03.03.2023

ORDER NO. 198/2023-CX (WZ) /ASRA/MUMBAI DATED 03.03.2023 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: The Commissioner of Central Excise and Service Tax, Kolhapur

Respondent: M/s. Ratan Udyog, D-40, MIDC. Shirol, Kolhapur

Subject : Revision Application filed under Section 35EE of Central Excise
Act, 1944 against the Order-in-Appeal No. KLH-EXCUS-000-
APP-110-2017-18 dated 09.05.2017 passed by Commissioner
(Appeals), Pune Appeals-II.

ORDER

The Revision Application have been filed by the Commissioner of Central Excise and Service Tax, Kolhapur-II (hereinafter referred to as the 'Department or Applicant') against the Order-in-Appeal No. KLH-EXCUS-000-APP-110-2017-18 dated 09.05.2017 passed by Commissioner (Appeals), Pune Appeals-II.

2. The facts of the case briefly stated are that the Respondent had filed 08 rebate claims on 07.10.2016 in respect of 150 ARE-1's for a total amount of Rs. 17,62,370/- alongwith relevant documents. On scrutiny of the said rebate claims it was noticed that the said 08 rebate claims were filed beyond the period of one year from the relevant date of export/re-warehousing as stipulated under Section 11 B of the Central Excise Act, 1944. Pursuant to the issue of show cause notice and following the due process of law, the Adjudicating Authority vide Order-in-Original No Adj/145/Div-II(Kolhapur-I)2016-17 dated 30.12.2016 rejected the rebate claims on the grounds that the claims were not lodged within the period as stipulated under Section 11B of the Central Excise Act, 1944, read with Rule 18 of the Central Excise Rules, 2002.

3. Being aggrieved with the impugned Orders-in-Original, the Respondent filed an appeal before the Appellate Authority viz. Commissioner (Appeals), Pune Appeals-II. The Appellate Authority, vide impugned Order-in-Appeal No. KLH-EXCUS-000-APP-110-2017-18 dated 09.05.2017 set aside the impugned Order-in-Original and allowed the appeal. The Appellate Authority allowed the appeals of the Applicant on the grounds that as held in the judgement in the case of Deputy Commissioner, Central Excise, Chennai vs. Dorcas Market Makers Pvt Ltd, in the absence of any specific prescription of time limit, the application of time limit was not justified and the SLP of the Department was dismissed *in limine* by the Hon'ble Supreme Court and in the absence of specific provision of Section 11B being made applicable in the said Notification, the time limit prescribed in the Section would not be automatically applicable to rebate under the Notification. Further the

Appellate Authority also relied upon the case of DSS Image Tech Pvt Ltd vs. Commissioner of Service Tax, Delhi.

4. Being aggrieved by the Orders-in-Appeal, the Applicant-department has filed the instant Revision Application on the following grounds:

4.1. That the provisions of Section 11B of the Central Excise Act, 1944 deals with the sanctioning of refund of duty including the rebate of duty paid on goods exported and specified the 'relevant date' for filing of such claim;

4.2. The Rule 18 of Central Excise Rules, 2002 and Notification No 19/2004-CE(N.T) dated 06.09.2004 govern the procedural aspect of the claims and further vide Notification No 18/2016-CE(NT) dated 01.03.2016, the aforesaid Notification has been amended to prescribe limitation by incorporating reference to Section 11B (1) of the Central Excise Act, 1944;

4.3. That in the instant case the time limitation of one year is to be computed from the date of certificate issued by the customs officer of SCZ for re-warehousing and the 08 rebate claims have been filed after the expiry of the one year from the relevant date which is in contravention of the procedure laid down under Notification No 19/2004CE(NT) dated 06.09.2004 as amended by Notification No 18/2016-C(NT) dated 01.03.2016;

4.4. That the observation of the AA that the ARE-1's are prior to 01.03.2016 and hence the claims filed beyond one year are not barred by limitation is incorrect as the respondent is required to lodge the claim before the expiry of the period specified under Section 11B of the Central Excise Act, 1944.

4.5. The Applicant-department relied upon the case of Positive Packaging Industries Ltd [2016(343) E.L.T. 909(GOI)] to further their contention.

5. The Respondent filed their written submissions to the Revision Application wherein they stated as under

5.1. That pursuant to the OIA, vide letter dated 16.05.2017 they approached the jurisdictional authority for sanction of the rebate claim and the rebate claim was sanctioned vide Order-in-Original No. 54/REF/CGST/DIV-II/KOP/2017-18 dated 28.07.2017;

5.2. That in view of the above order, the OIA was communicated to the department on 16.05.2017 and the RA was supposed to be filed on or before 16.08.2017 and is hence hit by limitation of time and is bound to be rejected without going into the merits;

5.3. That GOI in order No 34/2018-CX dated 02.04.2018 in the case of M/s Abode Systems India (P) Ltd and Order No 28/2018-ST dated 14.03.2018 in the case of M/s FIAT Partecipazioni India Pvt Ltd had rejected the RA filed by the Government as time barred;

5.4. That there is no provision under Rule 18 to compel the exporter to file the rebate claim within the time limit prescribed under Section 11 B of the C.Ex Act, 1944;

5.5. That the provisions for submission of the rebate claim within time limit prescribed under Section 11B of the C. Ex Act, 1944 was introduced under Rule 18 by making suitable amendments vide Notification No. 18/2016-CE (NT) dated 01.03.2016;

5.6. That at Page 10 of the OIO it is mentioned that the provisions of Notification No 18/2016 dated 01.03.2016 has been made applicable w.e.f 01.03.2016 and will apply to exports done after 01.03.2016 and will not apply to exports done prior to 01.03.2016 and the findings have not been challenged by the Department, and the exports in the instant case is during the period Oct 2013 to June 2015;

5.7. That the provisions in existence during the period in which the goods are exported are to be made applicable while deciding the eligibility of rebate claim and since the export of goods has been done before 01.03.2016 and since during the period prior to 01.03.2016, the provisions of Section 11B were not applicable the rejection of the claim is erroneous;

5.8. That the first part of Notification No 19/2004-CE(NT) dated 06.09.2004 is mandatory, substantive and based on policy of the governments (i.e actual export of goods and payment of duty), the second part of the Notification is procedural;

5.9. That when there is compliance of substantial provisions of the notification, merely for non-compliance of procedural provisions substantive

benefits cannot be denied as held in the case of Mangalore Chemicals and Fertilisers Ltd [1991(55) E.L.T 437(SC)]

5.10. The Respondent has relied upon the following case laws in support of their contention

- 1) Dorcas Market Makers Pvt Ltd [2015(321) E.L.T. 45 (Mad-HC) affirmed by Hon'ble Supreme Court [2015(325) E.L.T A 104(SC)]
- 2) JSL Lifestyle Ltd [2015(326) E.L.T 265(P&H-HC)]
- 3) DSS Image Tech Pvt Ltd [2016-TIOL-462-CEST.Del]

In view of the same the Respondent submitted that the impugned RA filed by the Department be rejected as time barred and also on merits.

6.. Personal hearing in the case was scheduled for 13.10.2022 or 03.11.2022, 09.12.2022 or 23.12.2022 and 06.01.2023 or 25.01.2023. Shri M.A. Nyalkalkar Advocate, appeared on 06.01.2023 on behalf of the Respondent and submitted that the department had delayed in filing of the Revision Application. He reiterated his earlier submissions and submitted that time limit of Section 11B is not applicable to rebate claims. He referred to the judgement of M/s Dorcas Markets and requested to maintain the Commissioner (Appeals) order. Shri Srikant Raut, Deputy Commissioner, appeared online for the hearing on 25.01.2023 on behalf of the Applicant. He submitted that the time limit of Section 11B is applicable for rebate. He further submitted that the Revision Application has been filed within time limit from the date the same was received in the Commissionerate.

7. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal. The Revision Application has been filed by the Department as the Original Authority rejected the rebate claims filed by the Respondent on the ground that the rebate claims are time barred as they have been filed after one year of clearances to SEZ. The Appellate Authority on the other hand has set aside the Order-in-Original on the grounds that the amendment vide Notification No 18/2016-CE(NT) dated

01.03.2016, to prescribe limitation by incorporating reference to Section 11B(1) of the Central Excise Act, 1944 is prospective in nature and as the ARE-1 was prior to 01.0.2016, the rebate claim filed beyond one year was not barred by limitation.

8.1. Government observes that before the Revision Application filed by the Department can be examined on merits, it is essential to ascertain whether the Revision Application can pass through the test of limitation.

8.2. For understanding the relevant legal provisions, the relevant section is reproduced below :

SECTION 35EE. Revision by Central Government.-

(1) The Central Government may, on the application of any person aggrieved by any order passed under section 35A, where the order is of the nature referred to in the first proviso to sub-section (1) of section 35B, annul or modify such order:

.....

.....

.....

(2) An application under sub-section (1) shall be made within three months from the date of the communication to the Applicant of the order against which the application is being made :

Provided that the Central Government may, if it is satisfied that the Applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months.

.....

8.3 From the above it is clear that an Applicant need to file the Revision Application within three months from the date of communication of the order to the Applicant with an additional condonable period of three months.

8.4. The Revision Application was filed on 01.12.2017 before the Revisionary Authority, Delhi and on 05.02.2018 before the Revisionary Authority, Mumbai. The date of communication of the Order dated 09.05.2017, of the Appellate Authority as claimed by the Applicant in the Revision Application is 05.09.2017. Accordingly, the Applicant was required to file the application by

05.12.2017 (i.e. taking the first 3 months into consideration) and by 05.03.2018 (i.e. taking into consideration a further extension period of 3 months). Thus, on the face of it, there is no delay of the part of the Applicant in filing of the Revision Application.

8.5. Be that as it may, the Applicant in the Revision Application has not mentioned that based on the decision of the impugned Order-in-Appeal, the Respondent had again filed the refund claim on 16.05.2017, which was sanctioned by the Department vide Order-in-Original No 54/Ref/CGST/Div-II/KOP/2017-18 dated 28.07.2017.

8.6. Government observes in view of the above rebate claim filed by the Respondent on 16.05.2017 and sanctioned by the Department, the claim of the Applicant that the impugned Order-in-Appeal was received only on 05.09.2017 does not hold water and the time limits prescribed under Section 35EE of the Central Excise Act, 1944 would be from 16.05.2017.

8.7. From above, it is clear that the Applicant was required to file the Revision Application within 3 months from the communication of the Appellate order. The delay thereafter, upto 3 months can be condoned. Since, the Revision Application is filed even beyond the condonation period of three months, the same has clearly become time barred and there is no provision under Section 35EE of the Central Excise Act, 1944 to condone the delay beyond the period of three months.

9.1. The Hon'ble Supreme Court in the case of *Collector Land Acquisition Anantnag & Others v. Mst. Katji & Others* reported in 1987 (28) E.L.T. 185 (S.C.) has held 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.

9.2. Further, the Hon'ble Supreme Court in the case of *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur*, (2008) 3 SCC 70 = 2008 (221)

E.L.T. 163 (S.C.), wherein the Court in the context of Section 35 of the Central Excise Act, 1944, has held thus :

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the Legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period.”

10. Government however, in the instant case, observes that the Applicant has not filed any application for condonation of delay and there is no mention of the rebate claim having been subsequently sanctioned on the basis of the impugned Order-in-Original. Government notes that even after taking into consideration the extended period of 3 months as provided in Section 35EE of the Central Excise Act, 1944, there is a delay of nearly 15 days and thus

Government observes that the Applicant have filed Revision Application beyond the threshold provided under Section 35EE of the Central Excise Act, 1944.

11. In view of the aforesaid discussions, Government holds that the Revisionary Authority, Government of India can condone the delay in filing application only upto the extended condonable period of three months and not beyond that. Since, in the present case, the Revision Application has been filed even beyond the condonation period of three months, Government is constrained to hold that the Revision Application filed by the Applicant is time barred and there is no provision under Section 35EE of the Customs Act, 1962 to condone the delay beyond the period of three months.

12. Thus, the Revision Application filed by the Applicant against Order-in-Appeal No. KLH-EXCUS-000-APP-110-2017-18 dated 09.05.2017 passed by Commissioner (Appeals), Pune Appeals-II stand dismissed as time barred, without going into the merits of the case.

13. The Revision Application is dismissed


20/3/23

(SHRAWAN KUMAR)

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

ORDER NO. 198 /2023-CX (WZ) /ASRA/MUMBAI DATED 30 .03.2023

To,

1) The Principal Commissioner of CGST, GST Bhavan, Kolhapur, Vasant Plaza, Commercial Complex, 4th and 5th Floor, C.S. No1079/2 KH, Rajaram Road, Bagal Chowk, Kolhapur 416 001

Copy to :

2) M/s Ratan Udyog, D-40, MIDC, Shirol, Kolhapur, 416 122, Maharashtra

- 3) The Commissioner, Central Excise and Service Tax, Pune Appeals-II, Vasant Plaza, Commercial Complex, 4th and 5th Floor, C.S. No1079/2 KH, Rajaram Road, Bagal Chowk, Kolhapur 416 001
- 4) Shri M.A Nyalkalkar, Advocate, Flat No R-2, Baker Residency, Opp. Sasane Ground, Tarabai Park, Kolhapur 416 003
- 5) Sr. PS to RA, Mumbai
- ~~6) Guard File.~~
- 7) Spare copy.