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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, Cuff Parade,
Mumbai- 400 005

F. NO. 198/36/2015-RA / 3131

Date of Issue: 25.05.2021

ORDER NO. 2\0/2021-CX(WZ) /ASRA/Mumbai DATED 3\05.2021 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, 1962.

Applicant : The Commissioner of GST & CX, Belapur.

Respondent : M/s PSL Tex-Styles Pvt. Ltd.,
147, Sanjay Building, No. 6,
Mittal Industrial Estate,
Andheri Kurla Road, Mumbai – 400 059.

Subject : Revision Applications filed, under Section 35EE of the Central Excise Act, 1944 against the Orders-in-Appeal No. CD/107/RGD/2015 dated 03.02.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

ORDER

This revision application is filed by the Assistant Commissioner, Maritime Commissionerate, Central Excise, Raigad Commissionerate, Mumbai - 410206 (hereinafter referred to as "the department") against the Order-in-Appeal No. CD/107/RGD/2015 dated 03.02.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

2. Brief facts of the case are that M/s PSL Tex-Styles Pvt. Ltd., 147, Sanjay Building, No.6, Mittal Industrial Estate, Andheri Kurla Road, Mumbai - 400 059 (hereinafter referred to as 'the respondent') had filed 07 (seven) rebate claims on 13.04.2006 for the total amount of Rs. 8,80,209/- (Rupees Eight Lakh Eighty Thousand Two Hundred Nine Only) under the provisions of Section 11B of the Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002. The rebate sanctioning authority vide Order in Original No. 2531/13-14/DC(Rebate)/Raigad dated 31.12.2013 sanctioned the impugned rebate claims.

3. However, while sanctioning the claims, interest for delay in sanctioning rebate claims was not paid to the respondent. Being aggrieved by the Order in Original, the respondent filed an appeal before the Commissioner of Central Excise (Appeals), Mumbai -II on the following grounds :-

- a) Board's Circular No. 670/61/2002-CX dated 01.10.2002 issued on non-payment of interest in refund / rebate cases which are beyond three months of filing also clarifies that "the provisions of Section 11BB of the Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months.
- b) The Adjudicating Authority failed to appreciate the spirit of the Board instructions and had deliberately ignored the clear instruction issued by the Board by denying substantial financial benefits to the exporter by denying their interest claim.

c) Instead of disposing the claim within 3 months from the date of receipt of application as per law, the department sanctioned and paid only the principal amount after 7 and half years.

4. The appellate authority vide Order in Appeal No. CD/107/RGD/2015 dated 03.02.2015 observed that legal provisions make it clear that interest is payable to the respondent if refund / rebate is sanctioned after three months of filing of the claim. Hence the respondent was entitled to interest at appropriate rate from the date of expiry of three months from the date of receipt of the rebate claims. The appellate authority vide impugned order in appeal allowed the appeal filed by the respondent.

5. Being aggrieved and dissatisfied with the impugned order in appeal, the department has filed this Revision Application on the following grounds that:

5.1 The respondent vide their letter dated 20.12.2013 addressed to Deputy Commissioner (Rebate), Raigad had submitted that they would not claim interest on the said seven rebate applications if the claims were processed immediately. The subject claims were processed and sanctioned on 31.12.2013 by the department. Since the information was suppressed while filing the appeal with the appellate authority, the respondent had not filed the appeal with clean hands after making complete disclosure of the all the facts.

5.2 Once the respondent had foregone their right to claim interest by submitting the written waiver, it was wrong on their part to file appeal for claiming the interest as an afterthought.

5.3 The department has relied upon the judgement in the case of Commissioner of Customs, Mumbai Vs. Virgo Steel (2002(141) ELT 598 (SC)) wherein the Hon'ble Supreme Court had examined the legal issue as to whether a mandatory requirement of a statute can be waived by the party concerned and had concluded that the same can be waived.

6. A Personal hearing in the matter was granted on 03.03.2021 and 10.03.2021. No one appeared for personal hearing so fixed. However, the respondent vide their letter dated 02.03.2021 filed additional submissions in the matter. The respondent submitted that: -

6.1 They had filed seven rebate claims on 13.04.2006 for the amount of Rs. 8,80,209/-.

6.2 The said file was misplaced / lost by the department and consequent to intervention of the higher authorities, they were asked to re-construct and submit the claim. Accordingly, they had submitted reconstructed claim to the rebate sanctioning authority.

6.3 The subject claim was decided vide Order in Original No. 2531/13-14/DC(Rebate)/Raigad dated 31.12.2013 by the rebate sanctioning authority sanctioning 7 rebate claims for the amount of Rs. 8,80,209/-. However, the department remained silent on the interest payment on account of delay in sanctioning the rebate claim in the order dated 31.12.2013. As such they approached appellate authority to sanction interest.

6.4 The Appellate Authority vide Order in Appeal No. CD/107/RGD/2015 dated 03.02.2015 allowed the appeal. Accordingly, the Deputy Commissioner (Rebate), Raigad sanctioned interest on rebate claims amounting to Rs. 3,94,575/- vide Order in Original No. 509/15/16/DC(Rebate)/Raigad dated 15.05.2015.

6.5 the instant Revision Application has no legal validity because: -

- a) They had filed rebate claims within validity period.
- b) The rebate claims were not processed in time and subsequent to intervention from the higher authorities, the claim was processed.
- c) By resorting arm-twisting the department had obtained illegal and non-statutory undertaking from them that no interest will be claimed for the delay. This undertaking was obtained under duress and has no legal validity.
- d) It is illegal to obtain undertaking from the exporters and is therefore punishable.

- e) When the interest claims were processed and paid, the department did not raise the point of undertaking as the department was fully aware of the illegality of the undertaking.
- f) The present Revision Application against the Commissioner's Order in Appeal is also illegal and unlawful.
- g) The Jurisdictional Deputy Commissioner sanctioned the interest claims, no objections of any kind were raised under his Order in Original No. 509/15-16/DC(Rebate)/Raigad dated 15.05.2014. Further, no appeal has been filed against the interest sanction order. As such the order has attained the finality.
- h) After receipt of the Order in Appeal dated 03.02.2015 from the concerned department, they submitted the same to the department on 16.03.2015 for further proceedings. But the department mentioned in the revision application that the said order in original was received on 24.03.2015 and the Revision Application was filed on 23.06.2015 which is unsustainable.
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.
8. Government first proceeds to discuss issue of time bar in filing this revision application. The chronological history of events is as under.

- a) Date of receipt of impugned order in Appeal
dated 03.02.2015 : 24.03.2015
- b) Date of filing of Revision Application : 23.06.2015
- c) Time taken between date of receipt of Tribunal : 92 days
to date of filing of revision application.

From the above, it is clear that department has filed this revision application after 92 days i.e. 3 months and 2 days. As per provisions of Section 35EE of Central Excise Act, 1944, the revision application can be filed within 3 months of the communication of Order-in-Appeal and the delay up to another 3 months can be condoned provided there are justified reasons for such delay. The Government considers that revision application

is filed after a delay of 02 days which is within condonable limit. Government, in exercise of powers under Section 35EE of the Central Excise Act, 1944 condones the said delay and takes up the revision application for decision on merit.

9. The Government notes that the impugned rebate claims were filed by the respondent on 13.04.2016 for the total amount of Rs. 8,80,209/-. The rebate claims were misplaced / lost by the department and the respondent reconstructed and resubmitted the said rebate claims to the department. It is found that the impugned rebate claims were processed and sanctioned by the department vide Order in Original No. 2531/13-14/DC(Rebate)/Raigad dated 31.12.2013. However, the Order in Original was silent on the interest payment on account of delay in sanctioning the rebate claims. The appeal filed by the respondent for interest was allowed by the appellate authority vide Order in Appeal No. CD/107/RGD/2015 dated 03.02.2015 and accordingly the interest to the tune of Rs. 3,94,575/- was sanctioned by the Deputy Commissioner (Rebate), Raigad Commissionerate vide Order in Original No. 509/15-16/DC(Rebate)/Raigad dated 15.05.2015. The department has filed instant Revision Application contesting the Order in Appeal No. CD/107/RGD/2015 dated 03.02.2015 passed by the appellate authority on the ground mentioned in the forgoing paras.

10. The Government observes that the department has filed the instant Revision Application mainly on the ground that the respondent vide their letter dated 20.12.2013 had submitted that the respondent have suppressed the facts while filing appeal against Order in Original.

11. In this regard, Government observes that once the rebate claim is held admissible under Section 11B of the Central Excise Act, 1944, interest liability starts after the expiry of three months of the date of receipt of application for rebate in the Divisional Office in terms of Section 11BB *ibid*. The relevant Section is reproduced below for ready reference :

"Section 11BB. Interest on delayed refunds. - If any duty ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section there shall be paid to that applicant interest at such rate [not below five percent and not exceeding thirty per cent per annum as is for the time being in fixed [by the Central Government by Notification in the Official Gazette], on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty.

Provided

Explanation : Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Dy. Commissioner of Central Excise under sub-section (2) of Section 118, the order passed by the Commissioner Appeals, Appellate Tribunal as the case may be, the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."

12.1 The Government notes that the impugned rebate claims were lost / misplaced by the department and the same were reconstructed by the respondent. In the event, the department was expected to process rebate claims without any delay. Instead, the rebates were processed and sanctioned after a period of almost 7 and half years only after submission of letter by the respondent giving undertaking that they would forgo the interest on refund amount. As such, the Government opines that the Order in Original passed by the adjudicating authority was relatively conditional one and thus against the spirit of law.

12.2 It is also noted that the rebate sanctioning authority preferred to be silent on the payment of interest under Section 11BB, which was statutory right of the respondent, while sanctioning the impugned rebate claim vide Order in Original 2531/13-14/DC(Rebate)/Raigad dated 31.12.2013. The impugned order in original neither had any reference to the letter dated 20.12.2013 submitted by the respondent nor any logical justification for denying this statutory right to the claimant. As such, the department failed to comply its part of the order. The Government opines that the department cannot usurp jurisdiction *de hors* provisions of law. Whereas, the respondent had agitated before the Appellate Authority that they wish to retain their right to claim the interest and they do not want to forgo the same because they have already complied with the necessary conditions under law while claiming the rebate amount. The Government, therefore, holds that the respondent is entitled to claim the interest because in the appeal before the Appellate Authority this was not agitated by the department.

12.3 In view of above discussions and findings, Government holds that the impugned order of Commissioner (Appeals) is legal and proper and hence, required to be upheld. Government, thus, finds no infirmity in impugned order and upholds the impugned order in appeal.

13. The Revision Application is dismissed being devoid of merit.


31/05/21
(SHRAWAN KUMAR)

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

ORDER No.2(0)/2021-CX(WZ) /ASRA/Mumbai DATED 31.05.2021

To,

The Commissioner of GST & CX,
Belapur Commissionerate 1st Floor,
CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.

Copy to:

1. M/s PSL Tex-Styles Pvt. Ltd., 147, Sanjay Building, No.6, Mittal Industrial Estate, Andheri Kurla Road, Mumbai – 400 059.
2. The Commissioner, Central Excise, (Appeals), Mumbai Zone-II, 3rd Floor, Utpad Shulk Bhavan, Plot No. C-24, Sector E, Bandra Kurla Complex, Bandra (E), Mumbai — 400 051.
3. The Deputy / Assistant Commissioner (Rebate), 1st Floor, CGO Complex, CBD Belapur, Navi Mumbai – 400 614.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard file.
6. Spare Copy.