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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. 198/25/WZ/17-RA

3426

Date of Issue: 01.09.2023

ORDER NO. 242/2023-CX (WZ) /ASRA/Mumbai DATED 27.04.2023 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 GST, Pune – I.

Respondent : M/s Mak's Technologies

Subject : Revision Application filed under Section 35EE of the Central Excise Act, 1944 against Order-in-Appeal No. PUN-EXCUS-001-APP-543-17-18 dated 1.11.2017 passed by Commissioner (Appeals –I), Central GST, Pune.

ORDER

This Revision Application has been filed by the Commissioner of Central GST, Pune - I (here-in-after referred to as 'the applicant/ Department') against the Order-in-Appeal No. PUN-EXCUS-001-APP-543-17-18 dated 01.11.2017 passed by the Commissioner (Appeals -I), Central Tax, Pune-I, Pune. The said Order-in-Appeal disposed of an appeal filed by M/s Mak's Technologies (here-in-after referred to as 'the respondent') against Order-in-Original No.198/Refund/ALD/CEX/16-17 dated 27-03-2017 passed by the Deputy Commissioner, Central Excise, Alandi Division, Pune - IV Commissionerate.

2.1 Brief facts of the case are that the Respondent had filed refund claim of Rs.21,49,636/- on 30.12.2016. On verification of the claim, the applicant-department found that the Respondent had exported goods after one year from the date of clearance and there were some mismatch in the documents submitted along with the refund claim. As per Notf.No. 19/2004-CE(NT) as amended and export procedure under Chapter 7 of Excise Manual, the excisable goods shall be exported within six months from the date on which they have cleared for export from the factory and also they have to file refund claim within one year from the date of payment. However, the Commissioner of Central Excise has the power to extend this period, for reasons to be recorded in writing why they could not export within the stipulated six months period. In this case, Respondent had filed the refund claim after expiry of one year from the date of clearance and could not obtain the necessary permission for export beyond a period of six months. Therefore, Appellant was issued SCN as to why the refund claim filed should not be rejected due to the claim being time barred.

2.2 The Respondent informed that the consignment of 'Copper Weld Wire' was removed from the factory under ARE-1 No.02/06.11.12 and necessary pre-shipment documents were also submitted to the Range office. During the course of verification at JNPT, Mumbai, the port officers

had taken objection in respect of valuation of goods being overvalued and the case was referred to SIIB (Special intelligence & investigation Branch) for further investigation. They took out the samples of goods under exportation and sent to the Customs approved valuator which disclosed that the goods had been over valued and therefore they reduced the value of said goods substantially which the Respondent did not accept. As the Respondent denied the valuation, the Customs department issued a Show Cause Notice dtd. 07.11.2013 for denial of export value of the consignment and also imposed redemption fine and curtailments in the FPS benefits (Export incentives). Meanwhile, the Respondent requested to release the goods against the PD bond without any security, but the request was denied. They submitted cost sheet and related documents in support of justification of valuation of goods but the deptt., did not consider the ground of merits and issued order-in-original dtd.30.05.2014 confirming the demand. Further, the Respondent preferred an appeal against the said Order on 15.06.2014. The Commissioner of Customs (Appeals) issued final order (Order-in-Appeal) on 25.07.2014 by setting aside the said O.I.O. dtd. 30.05.2014 and accepted the value declared by the Respondent. Further, the said Order-in-Appeal dtd. 25.07.2014 was also accepted by the Committee of Commissioner of Customs, Mumbai Zone -II on 10.10.2014. In view of this, the Respondent further approached the SIIB, JNCH, Sheva Mumbai to allow the export. Due to delay in completion of internal procedure at SII Band strike of labor, goods were finally exported on 19.10.2016. After export of said consignment and receipt of necessary post shipment documents, they filed a refund claim on 30.12.2016 and submitted a request for condonation for not obtaining permission from Commissioner of Central Excise for export of goods within six months from the date of clearance. The Respondent further stated that considering the above sequence of events, it is crystal clear that the delay in shipment of goods for export is on account compliances under litigation procedure at Customs authorities which were beyond their control. In support of their contention, Appellant had referred to Para 11.1 of the Circular No.81/818/1994-CX dtd. 25.11.1994, Para 8.7 of Circular

No.294/10/97-CX dtd. 30.01.1997& different case laws viz. Tablets India Ltd V/s Jt.Secretary Ministry of Finance& CCE, Chennai-1 2010(259) ELT 191-HC(Madras), etc. They further stated that though the physical export took place after the expiry of time limit prescribed under Notf.No. 19/2004 CE(NT) for which no advance permission for delay in export has been obtained, the same can be condoned post-facto on ground being technical/procedural lapses and litigation proceeding initiated by Customs authorities. With regards to mismatch in ARE- 1, shipping bill and invoice date, they stated that it happened due to manual mistake at the time of filing shipping bills. They accepted the mistake and requested to condone the same being technical mistake without effecting the revenue as goods have suffered excise duty at the time of removal from factory.

2.3 While deciding the case, the department found that the delay in export of goods was due to the investigation by the Customs authorities which reached the finality on 10.10.2014 and goods had been exported on 19.10.2016 after a delay of two years. The delay of two years from 10.10.2014 to 19.10.2016 has been explained as prolonged internal procedure and labor strike during the period. However, it is pertinent to mention that the Respondent had not attempted to obtain a condonation or a post facto approval for the delay in export from the competent authority as stipulated under Notf.No. 19/2004- CE(NT)dtd. 04.09.2004. Instead they had directly applied for refund claim. The department found that delay of two years after the decision of Appellate authority (i.e. Commissioner, Customs (Appeal) was not acceptable as no valid reasons had been given by the Respondent. In view of the above finding, the Adjudicating Authority viz Deputy Commissioner vide OIO No.198/Refund/ALD/CEX/16-17 dated 27-03-2017 rejected the refund claim.

2.4 Aggrieved by the said Order, the Respondent filed appeal against the Order with the Commissioner Appeals, Pune who vide hi OIA No. PUN-EXCUS-001-APP-543-17-18 dated 01.11.2017, allowed the rebate claim amounting to s. 21,49,636/- along with the interest.

3. Aggrieved, the applicant/Department has filed the subject Revision Application to the extent as far as granting the interest on rebate claimed amount, on the following grounds:-

3.1 The assessee did not seek extension of time limit for export as provided in the notification no. 19/2004-C.E. (NT) dated 6.9.2004.

3.2 The two case laws relied upon by the Commissioner (Appeals) in the case of KOSMOS Healthcare (a Writ Petition) and Tablets India Ltd. (a Writ Appeal) are orders of Hon'ble High Courts which are in exercise of WRIT JURISDICTION and not in course of ordinary appeals.

3.3 The adjudicating authority has correctly interpreted the law as he was bound by the law.

In view of the above, it was requested that the impugned Order-in-Appeal be set aside and the Order-in-Original dated 27-03-2017 be restored.

4 The Respondent has filed their submissions against the Notice issued in respect of the Revision Application vide their letter dated 09.02.2018 which is as follows:

4.1 That the present Revision Application has been filed by the Applicant department stating that " that the OIA is not legal and proper to the extent as far as granting the interest on rebate claimed amount". Hence the respondents restrict themselves to the limited defense in this regard only as there are no other requests by the applicants in the said application.

4.2 That they had exported the goods on payment of Central Excise Duty under A.R.E.1 No. 02/06.11.2012 and the said consignment was kept on hold by the Customs Authorities for certain enquiries and investigation in regard with the valuation of the goods covered under the said export document; That the said enquiry

resulted into issuance of Show Cause Notice dated 7.11.2013 i.e. after merely a period of two years and that this Show Cause Notice was decided against our company vide Order No. 23/2014-15 Dated 30.05.2014; That they filed an appeal against the said Order dated 30.05.2014 and the said appeal was decided in their favour by Hon'ble Commissioner Customs Appeals Mumbai vide his Order No. 3018(SIIB [EXP]2014[JNCHJEXP151 dated 25.07.2014; That this Order dated 25.07.2014 was accepted as legal & correct by the Committee of Commissioners of Customs on 10.10.2014 after which they approached the Customs Authorities for export dispatch of the subject goods; That, there was a delay of prolonged period on account of the internal procedures of Customs Department as well as on account of strike of labour at port and the goods could be exported on 19.10.2016 from the JNPT Customs Port Mumbai where these goods were lying for the prolonged period only on account of the enquiries and investigations by Customs Authorities and not for any delay caused by the company M/s. Maks Technologies.

4.3 That there was no intended delay in export of goods on account of the Respondent but for the reasons stated above the export was delayed.

4.4 That the Order In Appeal appears to be accepted by the applicants to the extent of grant of rebate but the applicant differs for grant of Interest on such delayed sanction of rebate amount. This is apparent from the opening of the Revision Application.

4.5 That the contention of the applicant that "the two case laws relied upon by the Commissioner (Appeals) in case of KOSMOS HEALTHCARE AND TABLETS INDIA LTD are passed in exercise of writ jurisdiction and not in course of ordinary appeals, is totally illegal and baseless.

4.6 That as regards the question of grant of interest on delayed sanction of rebate, the provisions of Section 11B of Central Excise Act, 1944 are correctly applied by the Hon'ble Commissioner (Appeals-1) Pune in his order dated 01.11.2017 and grant of interest is an automatic occurrence of said legal provisions. Therefore, once it is proved beyond doubt that there has been delay in grant of rebate claim amount, the recourse of grant of interest follows automatically.

4.7 That the impugned Order In Appeal has been proper and legal in extending the benefit of rebate along-with interest and therefore may please not be interfered with at this stage. The Revision Applicant has no grounds or legal backing to oppose the Order In Appeal and therefore has only requested to set aside the said order without quoting any sufficient factual or legal grounds.

4.8 The Respondent submitted that the Hon'ble Revision Authority may pass the necessary orders to the restricted part of request of "Grant of Interest" made by the applicant and not the other part of the Order In Appeal NO. PUN-EXCUS-001-APP-543-17-18 DATED 01.11.2017.

4.9 The Respondent requested to uphold the Order-in Appeal.

5. Personal hearings were scheduled on 13-10-2022, 03-11-2022, 14-12-2022, and 11-01-2023. However, no one appeared before the Revisionary Authority for personal hearing on any of the appointed dates for hearing. Since sufficient opportunity for personal hearing has been given in the matter, the case is taken up for decision on the basis of the available records.

6. Government has carefully gone through the relevant case records, the written submissions and also perused the impugned Order-in-Original and the Order-in-Appeal and the Revision Application.

7. Government observes that in this case the Adjudicating Authority had rejected the rebate claim on the grounds that the goods have been exported after six months from the date of clearance of the goods from the factory. The Appellate Authority allowed the rebate claim on the grounds that the delay in export was due to department's proceedings and not due to any malafide intention of the Respondent.

8. On going through the Revision Application and the Authorization letter issued to file the revision application, it is noticed that the department has categorically stated that the Appellate Order is not legal and proper to the extent as far as granting the interest on rebate claimed amount, however, the prayer is for upholding and restoring the Adjudicating Authority's order. The Respondent vide their submissions has requested to restrict the decision to the eligibility of the interest on the rebate claimed only since the appeal is for interest only.

9. Government notes that the issue to be decided is whether the Appellate Order granting interest on the rebate claim filed by the respondent is proper or otherwise. The department had rejected the rebate claim on the grounds that claim was hit by the limitation of time prescribed by Section 11B of the Central Excise Act, 1944. Government finds that the chronology of events of the instant case is as follows:-

- i) The goods viz 'Copper Weld Wire' were cleared from the factory under ARE-1 No. 2/6-11-12 and documents were submitted to the Range Office on 7-11-12;
- ii) Certain enquiries and investigation in regard with the valuation of the goods covered under the said export document were carried out by SIIB(X);
- iii) Show Cause Notice dated 7.11.2013 was issued for denial of export value of the consignment and curtailment in the FPS benefits;
- iv) The SCN was adjudicated and the same was confirmed vide OIO No. 23/2014-15 Dated 30.05.2014;

- v) An appeal was filed against the said Order dated 30.05.2014 and the said appeal was decided vide OIA No. 3018(SIIB [EXP]2014[JNCHJEXP151 dated 25.07.2014 in favour of the Respondent and the same was accepted by the department on 10-10-2014;
- vi) The Respondent approached the Customs Authorities for export dispatch of the subject goods and on account of the internal procedures of Customs Department as well as on account of strike of labour at port, the goods were exported on 19.10.2016.
- vii) The Respondent then filed the refund claim on 30-12-2016 along with all the necessary documents

10. Government finds that there is no dispute in respect of the above events. The department's contention is that there is no valid reason for the delay of two years from the date of acceptance of the Commissioner Appeal's Order to the date of export and also that the Respondent did not obtain a post facto approval for delay in export. The department's contention is not acceptable as it is very clear that the applicant had approached the Customs authorities for the dispatch of the said goods and the same was delayed due to the departmental procedures, strike of labour at the Port. If the adjudicating authority was not satisfied with the reasons given for the delay, he could have checked the same from the Customs Authorities as to whether the same is true or not. Government finds the reasons given by the Respondent to be valid and does not find any reasons for getting their own exports delayed. As the Respondent approached the Customs Authorities for export of their goods as soon as the OIA was accepted, the delay in export is therefore not in their hands. The rebate claim cannot be denied as the delay is attributable to the departmental proceedings and not due to any fault of the Respondent. Government therefore finds that Commissioner Appeal has correctly held that the rebate claim is allowed.

11. Government holds that once the Rebate claimed allowed is legal then the interest clause is automatically applied. Commissioner Appeal has discussed the same in detail and Government finds that the same is judicious. The relevant paras is as under:

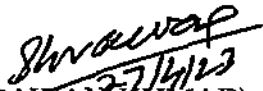
"7. I observe that Appellant has suffered a lot, as their Exports were only delayed due to department's actions and they have been unnecessarily dragged, once again into litigation, and have been compelled to file the present Appeal. In view of this I find that the Appellant are not only eligible for rebate but also for the payment of the interest on account of delay in sanction of the rebate/refund. CBEC in para 2 of Circular No. 670/61/2002-CX, dated 1-10- 2002 issued under F. No. 268/51/2002-CX.8 has also clarified that the provisions of Section 11BB of the Act are attracted "automatically" for any refund sanctioned beyond a period of three months. The Para 2 of the said Circular reads as under:

'2. In this connection. Board would like to stress that the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. The jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Simultaneously, Board would like to draw attention to Circular No. 398/31/98-CX, dated 2-6-98 [1998 (100) EL.T. T16] wherein Board has directed that responsibility should be fixed for not disposing of the refund/rebate claims within three months from the date of receipt of application. Accordingly, jurisdictional Commissioners may devise a suitable monitoring mechanism to ensure timely disposal of refund/rebate claims. Whereas all necessary action should be taken to ensure that no interest liability is attracted, should the liability arise, the legal provision for the payment of interest should be scrupulously followed'."

12. In view of the above Government holds that the Commissioner Appeal has rightly allowed the rebate claim along with the interest to the Respondent

13. In view of the above, Government does not find any reason to interfere with the OIA No. OIA No. PUN-EXCUS-001-APP-543-17-18 dated 01.11.2017 passed by Commissioner (Appeals-I), Central Tax Pune-I, Pune and rejects the appeal filed by the department.

14. The Revision Application is disposed of in the above terms.


(SHRAWAN KUMAR)
Principal Commissioner & Ex-Officio
Additional Secretary to Government of India

ORDER No ~~212~~/2023 -CX (WZ) /ASRA/Mumbai dated 27.04.2023

To,

1. The Principal Commissioner of Central GST, Pune - I Commissionerate, 41/A, GST Bhavan, Opp. Wadia College, Sasoon Road, Pune - 411 001.
2. M/s Mak's Technologies, Gat No. 1361, B/2/4, Jain warehouse, Pune Nagor Road, Wagholi, Distt Pune-412207

Copy to:

1. A.C/D.C of Central GST, Viman Nagar Division, C-wing, 2nd Floor, GST Bhavan, 41/A Opp. Wadia College, Sasoon Road, Pune-411 001.
2. The Commissioner (Appeals-I), Central GST, Pune, 3rd floor, 'F' Wing, GST Bhavan, 41-A, Sasoon Road, Pune - 411 001.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Notice Board.