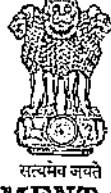


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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

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.198/73/WZ/2017-RA | ~~3479~~ 3480

Date of Issue: 02.05-04.2023

ORDER NO. 257 /2023-CX(WZ)/ASRA/MUMBAI DATED 28.04.2023  
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 Excise, Pune-II.

Respondent : M/s Lenze Mechatronics Pvt. Ltd.,  
Plot No I-19, Gate No 1898,  
Khed City, Khed to Padal Road,  
Kanhesar, Tal Khed, Pune 410 505

Subject : Revision Application filed, under Section 35EE of the Central  
Excise Act, 1944 against the Order-in-Appeal No. PUN-EXCUS-  
001-APP-484-16-17 dated 10.03.2017 passed by the  
Commissioner (Appeals-I), Central Excise, Pune.

**ORDER**

This Revision Application has been filed by the Commissioner of Central Excise, Pune-II (hereinafter referred to as the "Applicant-department") against the Order-in-Appeal No. PUN-EXCUS-001-APP-484-16-17 dated 10.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune.

2.1 Brief facts of the case are that M/s Lenze Mechatronics Pvt. Ltd., Plot No I-19, Gate No 1898, Khed City, Khed to Padal Road, Kanhesar, Tal Khed, Pune 410 505 (hereinafter referred to as "the Respondent") are manufacturers of "spares for motor" under chapter 85 of the CETA, 1985. The Respondent filed a rebate claim for Rs. 1,67,838/- being the duty paid on products manufactured and cleared for export under 06 ARE-1's. The Respondent filed the rebate claim on 01.06.2015 through electronic (online) mode as per the CBEC Circular No. 919/9/2010-CX dated 23.03.2010 and submitted all the relevant documents by post which was received by the sanctioning authority on 29.07.2015. The details of the ARE-1's are as under:-

Sr. No.	Rebate Claim No. / Date	ARE-1 No./Date	Date of shipment
1	05/05.06.2014	346 & 349/05.06.2014	11.06.2014
2	06/09.06.2014	367/09.06.2014	12.06.2014
3	07/10.06.2014	372/10.06.2014	15.06.2014
4	09/18.06.2014	403 to 405/18.06. 20 14	24.06.2014
5	10/25.06.2014	466/25.06.2014	25.06.2014
6	11/26.06.2014	477/26.06.2014	27.06.2014

2.2. Following the due process of law the Original Adjudicating Authority i.e Assistant Commissioner, Central Excise, Chakan II Division, Akurdi, Pune vide Order-in-Original No. PII/CEX/DIVN.IV(CKN.II)/REB/DLC/245/2015-16 dated 21.10.2015 rejected the claim on the grounds that the rebate claim was filed after the relevant date, under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002.

3. Aggrieved by the Order-in-Original, the Respondent filed an appeal before the Commissioner (Appeals), Central Excise, Pune. The Appellate Authority vide Order in Appeal No. PUN-EXCUS-001-APP-484-16-17 dated 10.03.2017 set aside the impugned Order-in-Original and allowed the appeal filed by the Respondent, holding that the date of filing the rebate claim electronically has to be considered as filing of claim and hence in the instant case, the claim was not time barred.

4. Being aggrieved with the above Order-in-Appeal, the department has filed this Revision Application under Section 35EE of Central Excise Act, 1944 before the Government on the following grounds :-

4.1. That the Appellate Authority has passed the OIA disregarding the legal provisions in Section 11B and Notification No 19/2004-CE(NT) dated 06.09.2004;

4.2. That rebate is also refund and hence time limit within which the rebate claim has to be filed will be the same as provided under Section 11B of the CEA, 1944 and in the instant case the relevant date will be the date on which the ship or the aircraft in which such goods are loaded, leaves India;

4.3. That in both cases i.e claiming rebate by electronic declaration and claiming rebate from Central Excise, the rebate claim has to comply with the provisions of Section 11B of CEA, 1944 and relevant notifications and any other guidelines and hence it should be filed within one year from the relevant date;

4.4 That the Appellate Authority has erred in relying on the decision of the Hon'ble CESTAT in the case of NCS Pearson India Pvt Ltd vs. Commissioner of Customs, C.Ex and ST [2014(313) E.L.T 639(Tri-Del)] as the ratio of the judgement is not applicable to the present case;

4.5. That the Appellate Authority has erred in mis-interpreting the circular No. 919/9/2010-CX dated 23.03.2010 as the circular nowhere states that if the refund claim is filed online then the assessee does not have to submit the

original copy of the application to Central Excise and the circular does not state that if the refund claim is filed online without specified documents before the expiry of the specified period, then the assessee can submit the specified documents after the expiry of the period specified under Section 11B of the Central Excise Act, 1944;

4.6. That the said circular merely provides for filing of refund claim online and thus there is no conflict between Notification No 19/2004-CE (NT) dated 06.09.2004 and Circular No 919/9/2010-CX dated 23.03.2010.

Under the circumstances, the Applicant-department prayed to set aside the impugned Order-in-Appeal and restore the Order-in-Original

5. Personal hearing in this case was scheduled for 06.10.2022 or 19.10.2022, 08.12.2022 or 22.12.2022, 08.02.2023 or 15.02.2023. No one appeared for the personal hearing on behalf of the department. Shri R.S Paranjape appeared on behalf of the respondent and reiterated the earlier submissions. He submitted that electronic filing of claim was within time and department has not disputed the same and contended that filing of documents subsequently can not make the claim time barred. He requested to reject the revision application filed by the department. They submitted that the electronic filing of claims cannot be disregarded. They stated that a written submission would be filed in two days through email.

6. 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.

7. On perusal of records, Government observes that the respondent had filed a rebate claim totally amounting to Rs.1,67,838/- under Notification No. 19/2004 C. Ex. (NT) dated 06.09.2004 issued under Rule 18 of Central Excise Rules 2002 read with Section 11 B of Central Excise Act, 1944, for the goods exported by them. The impugned rebate claims were rejected vide Order-in-Original No. PH/CEX/DIVN-IV(CKN-II)/REB/DLC/245/2015-16 dated

21.10.2015 on the ground that the same were hit by the limitation of time under the provisions of Section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002. The Appellate Authority had allowed the appeal filed by the respondent. The department has filed the instant Revision Application on the grounds as mentioned in forgoing paras.

8.1. The Government finds that the impugned goods were exported by the respondent under six ARE-1's dated 05.06.2014, 09.06.2014, 10.06.2014, 18.06.2014, 25.06.2014 and 26.06.2014. The date of shipment of goods in respect of the export under the six ARE-1's are 11.06.2014, 12.06.2014, 15.06.2014, 24.06.2014, 25.06.2014 and 27.06.2014.

8.2. Government observes that the Respondent had filed the rebate claim electronically on 01.06.2015 in respect of duty paid on goods exported under impugned ARE-1s. These facts have not been refuted by the department and no deficiency memo has been issued for the shortcomings in the rebate claim. The Government finds that the Applicant-department has rejected the impugned rebate claims on the ground that the same were filed on 01.06.2015 without enclosing relevant documents and the rebate claim was filed physically with the documents on 29.07.2015. And, being incomplete claims, the department deduced that the date of filing the rebate claims cannot be taken as 01.06.2015, as per the provisions of Notification No. 19/2004-CE(NT) dated 06.09.2004. Further, the adjudicating authority observed that the respondent filed the rebate claims physically together with relevant documents on 29.07.2015 i.e. beyond stipulated period of one year from the date of shipment as envisaged under Section 11B of the Central Excise Act, 1944 and as such the same were hit by time limitation.

9. The issue involved in the Revision Application is whether the claims filed by the respondent are time-barred or not despite being filed online by the Respondent. It is contention of the Respondent that rebate claim in question were filed by them electronically on 01.06.2015 in view of condition No. 3(c) of Notification No 19/2004-CE (NT) dated 06.09.2004 and Circular No.

919/9/2010-CX, dated 23.03.2010. The Respondent has relied on the decision in the case of NCS Pearson India Pvt Ltd vs Commissioner of Customs, Central Excise & Service Tax, Noida [2014(313) E.L.T. 639(Tri-Del)].

10.1. Government notes that in the instant case the claims were filed after almost two months from the date of filing the claim online. It is also observed that no communication regarding the deficiency/short coming in the filing of the claim has been issued by the Applicant.

10.2. The fact of submission of the claim online, has not been disputed by the applicant-department and no deficiency memo regarding shortcomings in documents has been issued by the Applicant-department. Since the Respondent has submitted the claim electronically in pursuance of Board Circular, it will be in interest of justice not to treat the claims as time-barred as the rebate claims were electronically submitted on 01.06.2015. .

11. In this regard, Government observes that there are catena of judgments wherein it has been held that time-limit to be computed from the date on which refund/rebate claim was originally filed. High Court, Tribunal and GOI, have held in following cases that original refund/rebate claim filed within prescribed time-limit laid down in Section 11 B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time-barred as the time limit should be computed from the date on which rebate claim was initially filed.

(a) In a case of M/s. IOC Ltd. reported as 2007 (220) E.L.T. 609 (GOI) as well as in a case of M/s Polydrug Laboratories (P) Ltd., Mumbai (Order No. 1256/2013-CX dated 13.09.2013) GOI has held as under :-

***“Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after removing defects was submitted under section 11B of Central Excise Act, 1944.”***

(b) Similarly in case of Goodyear India Ltd. v. Commissioner of Customs, Delhi, 2002 (150) E.L.T. 331 (Tri. Del.), it is held that

*“claim filed within six months initially but due to certain deficiency resubmitted after period of limitation. Time limit should be computed from the date on which refund claim was initially filed and not from the date on which refund claim after removing defects was resubmitted. Appeal allowed. Sections 3A and 27 of Customs Act, 1962.”*

(c) In a case of Apar Industries (Polymer Division) Vs Union of India [Special Civil Application No. 7815 of 2014 {2016 (333) E.L.T. 246 (Guj.)}], wherein the petitioner had submitted the rebate claim in time although, in wrong format and the said claim was returned to the petitioner upon which the petitioner represented the same claims along with necessary supporting documents later on and these applications were treated by the Department as time barred and claims were rejected. While disposing the petition, the Hon'ble High Court of Gujarat in its Order dated 17.12.2015, observed that

*“Thus, making of the declarations by the petitioner in format of Annexure-19 was purely oversight. In any case, neither Rule 18 nor notification of Government of India prescribe any procedure for claiming rebate and provide for any specific format for making such rebate applications. The Department, therefore, should have treated the original applications/declarations of the petitioner as rebate claims. Whatever defect, could have been asked to be cured. When the petitioner represented such rebate applications in correct form, backed by necessary documents, the same should have been seen as a continuous attempt on part of the petitioner to seek rebate. Thus seen, it would relate back to the original filing of the rebate applications, though in wrong format. These rebate applications were thus made within period of one year, even applying the limitation envisaged under Section 27 of the Customs Act.....”*

**Government also observes that the aforesaid decision of High Court of Gujarat has been accepted by the department as communicated vide Board Circular No.1063/2/2018-CX dated 16.02.2018.**

12. Hon'ble High Court of Delhi in the case of C.C.E. Vs Arya Exports and Industries [2005(192) ELT 89] has also held that date of filing claim is the

date on which claim was filed initially in form not prescribed or without documents.

13. It is found that in the instant case the respondent had filed the rebate claims electronically on 01.06.2015, as facilitated under CBEC Circular No. 919/9/2010 dated 23.03.2010. The Government, therefore, holds that the date of filing of the impugned rebate claims, though incomplete, was 01.06.2015.

14. In view of foregoing discussions, Government is of the considered view that the rebate claims filed by the respondent are to be treated as filed within stipulated time limit since they were initially filed within stipulated time limit i.e. electronically on 14.06.2014.

15. In view of the above discussion, Government holds that the Appellate Authority has rightly allowed the appeal filed by the Respondent. Thus, Government does not find any infirmity in the Order-in-Appeal No. PUN-EXCUS-001-APP-484-16-17 dated 10.03.2017 passed by the Commissioner (Appeals-I), Central Excise, Pune I and, therefore, upholds the impugned Order-in-Appeal.

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

  
(SHRAWAN KUMAR)

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

ORDER No. 257/2023-CX(WZ) /ASRA/Mumbai DATED 28.04.2023

To,  
The Pr. Commissioner of CGST,  
Pune – I Commissionerate,  
GST Bhavan, ICE House,  
Opp Wadia House, Pune 411 001



Copy to:

1. M/s Lenz Mechatronics Pvt Ltd, Plot No. I-19, Gat No 1898, Khed City, Khed to Pabal Road, Kanhesar, Tal. Khed, Pune 410 505.
2. The Commissioner of CGST ( Appeals-I), Pune-I, GST Bhavan, F Wing, 3<sup>rd</sup> Floor, 41/A, Sassoon Road, Pune 411 001.
3. Sr. P.S. to AS (RA), Mumbai
- ✓ 4. Guard file.
5. Notice Board.