

198/125/13-RA CX
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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, Centre-I, World Trade Centre, Cuff Parade, Mumbai- 400 005

F NO. 198/125/13-RA CX/812

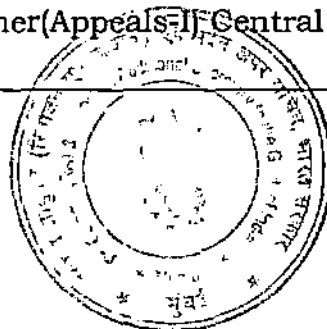
Date of Issue: 18.01.2018

ORDER NO. 28/2017-CX (WZ)/ASRA/Mumbai Dated 29.12.2017
OF THE GOVERNMENT OF INDIA PASSED BY SHRI ASHOK KUMAR MEHTA,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF CENTRAL EXCISE
ACT, 1944

Applicant: The Commissioner of Central Excise, (Pune-I), 41-A, ICE
House, Sassoon Road, Opp Wadia College, Pune 411 001.

Respondent: M/s Mather Platt Pumps Ltd., Mumbai- Pune Road,
Chinchwad, Pune 411 019.

Subject: Revision Application filed, by The Commissioner of Central Excise,
(Pune-I), 41-A, ICE House, Sassoon Road, Opp Wadia College,
Pune 411 001 against the Order -in -Appeal No.
Pune-EXCUS-001-App-093-13-14 dated 06.09.2013
passed by The Commissioner (Appeals-I) Central Excise, Pune-I.



ORDER

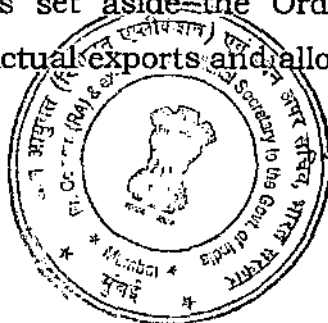
This Revision Application has been filed by the Commissioner of Central Excise, (Pune-I), (hereinafter referred to as the "Applicant") against the Order – in -Appeal_No. Pune-EXCUS-001-App-093-13-14 dated 06.09.2013 passed by The Commissioner (Appeals-I) Central Excise, Pune-I.

2. The facts, in brief, giving rise to filing of the present revision are as below.

The Respondents are holders of Central Excise Registration No.AABCD3568LXM001 for the manufacture of excisable goods viz. Power Driven Pump Set Handling Water falling under Chapter Heading No. 84137010 of the first schedule of the Central Excise Tariff Act, 1985 and are also exporting the said goods. They are availing Cenvat credit facility of the duty paid on inputs as per Rule 3 of the Cenvat Credit Rules, 2004 (hereinafter referred to as the "CC Rules"). The Appellants filed a rebate claim on 14.9.2012 for Rs.14,77,443/- in terms of Section 11B of the Act read with Rule 18 of Central Excise Rules, 2002 (hereinafter referred to as "CE Rules"). The said rebate claim was rejected vide the impugned Order-in-Original No. PI/Div.II/Reb/74/2012-13 dated 24.12.2012 inter alia mainly on the following grounds :

3. The Respondents cleared the goods from their factory for export on 29.9.2011 and as per the endorsement made by the Customs Officer of the Port the consignment left only on 24.4.2012 , i.e. beyond 6 months from clearance.

4. Being aggrieved the Respondents filed an appeal before the Commissioner (Appeals-I) Central Excise, Pune-I against the above said order on the grounds that the delay in exports was beyond their control. Vide the Order –in -Appeal_No. Pune-EXCUS-001-App-093-13-14 dated 06.09.2013 the Appellate authority has set aside the Order-in-Original dated 24.12.2012, condoned the delay in actual exports and allowed the respondents Appeal. This



Revision Application has been filed against the above impugned Order in Appeal inter alia on the following grounds.

(a) The claimant had prepared export invoices dated 29.09.011 for their product "Power Driven Pump Sets" for handling water for export through cargo handling agent to M/S United Chemlide Ind. (Z) Ltd., Lusaka, Zambia on appropriate payment of duty. The aforesaid excisable goods namely "Power Driven Pump Sets" have been exported by the claimant and as per the endorsement made by the Customs Officer of the Port, the consignment left India only on 24.04.2012, i.e. beyond 6 months from the date of clearance from the factory.

(b) As per Para (5) (B) (a) (i) of Section 11B of the Act, the "relevant date" in respect of the goods, which are exported by sea/air, is the date on which the ship or the aircraft in which such goods are loaded, leaves India.

(c) As per one of the conditions mentioned in the Notification No. 19/2004 - Central Excise (N.T.), dated 06.09.2004 governing rebate of duties on export to the countries other than Nepal and Bhutan, i.e. condition no. 2(b), the excisable goods have to be exported within six months from the date on which these were cleared from the factory. Hence, the rebate cannot be granted to them for non-fulfillment of mandatory conditions.

(d) In the instant case, the claimant has admittedly not filed an application with the Commissioner of Central Excise for condonation of delay in exports.

(e) The Appellate Authority in his findings has held that the goods were sent to Jawaharlal Nehru Customs House Port, Nhava Sheva, Raigad on 20.03.2012 and the Shipping Bills were generated on the same day i.e. within 6 months from the date of clearance of the said goods from the factory. However, Mate Receipt was prepared by the Customs Authorities on 24.04.2012 and the goods were shipped on the day of availability of ship. In this context, it is notable to mention here that Mate receipts are prepared by the Shipping Agency, once the cargo is given out of charge by the Customs

for loading on board the Ship. The claimant while appealing against the abovementioned Order-in-Original to the Appellate Authority had admitted that the Shipping Agency took 35 days to upload the goods. Hence, the delay in this case was not because of the customs authorities.

(f) The claimant was very much aware of the fact that there could be delay of the physical export, but he failed to take precautionary measures by applying to the jurisdictional Commissioner for extension, as envisaged in the Notification No. 19/2004-Central Excise (N.T.), dated 06.09.2004

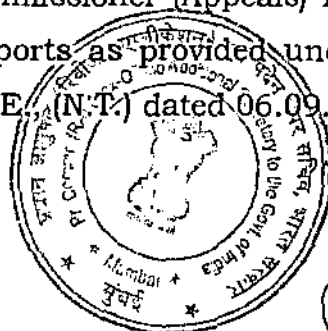
(g) The Notification, has been issued with a view to govern the export operations and no assessee can export the excisable goods as suitable to his time frame. The extension for the export period should have to be permitted by the jurisdiction Commissioner of Central Excise, as per the Notification No. 19/2004-Central Exc (N.T.), dated 06.09.2004 The Appellate Commissioner has therefore, erred condoning the delay. Further, Commissioner(Appeals) has no jurisdiction to condone the delay, as this power lies with the jurisdictional Commissioner of Central Excise and not Commissioner(Appeals). He has therefore, exceeded his jurisdiction while condoning the delay in exports.

5. In view of the above, the applicant submits that;

(i) the impugned Order-In-Appeal No. PUN-EXCUS-001-APP-093-13-14 dated 06.09.2013 maybe stayed as it would result in an inadmissible rebate being sanctioned to the Respondent Claimant.

(ii) Set aside the Order-in-Appeal No.- PUN-EXCUS-001-APP-093-13-14, dated 06.09.2013, filed by the claimant allowing the rebate claim amounting to Rs.14,77,443/- .

(iii) To hold that the Commissioner (Appeals) has no power or authority to condone the delay in exports as provided under condition no. 2(b) of the Notification 19/2004 —C.E. (N.T.) dated 06.09.2004;



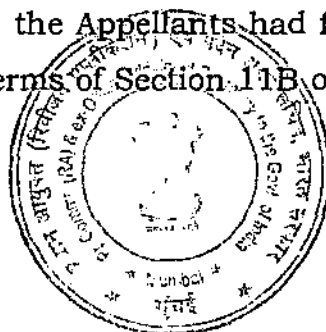
(iv) Uphold and re-store the Order-in-Original No.-PI/Div.II/Reb/74/20 dated 24.12.2012 passed by the Asst. Commissioner, Central Excise, F Division, Pune-I Commissionerate, so far as it relates to rejection of rebate claim to the extent of Rs. 14,77,443/-.

6. A Personal Hearing was held on 20th November, 2017 which was attended by Shri Shreesh Kumar B. Parab, Excise Manager, of M/s Mather Platt. He reiterated the submissions filed through their letter dated 01.03.2014 and pleaded that the Order in Appeal be upheld and Revision Application be dismissed as the department had already sanctioned the Rebate claim vide order no. P-I/THR-DN/REF/054/2015 dated 29.05.2015.

7. Government has carefully gone through the relevant case records & written submissions and the impugned Order-in-Original and Order-in-Appeal and the submissions made by the Respondent vide their letter dated 01.03.2014. The issue to be decided is whether the rebate claim is admissible in respect of duty paid goods exported after six months from the date of clearance from the factory. The issue of the Respondents not obtaining the permission from the Commissioner of Central Excise for extending the export period also needs to be addressed.

8. The Application for stay of the Order-In-Appeal No. PUN-EXCUS-001-APP-093-13-14 dated 06.09.2013 passed by the Commissioner (Appeals) has become redundant in view of the fact that vide Order no. P-I/THR-DN/REF/054/2015 dated 29.05.2015 the rebate claim has already been sanctioned and credited to the Respondents.

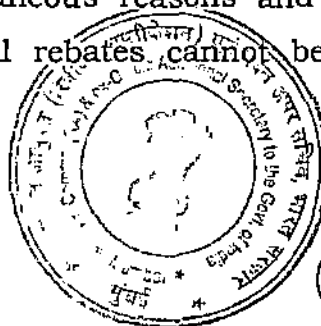
9. The government agrees that there is no dispute that the goods were exported and the export proceeds have also been realized by the respondent. There is also a consensus that under the provisions of para (5) (B) (a) (i) of Section 11B of the Central Excise Act 1944 the "relevant date" of export in the instant case is 24.04.2012. Thereafter, the Appellants had filed a rebate claim on 14.09.2012 for Rs.14,77,443/- in terms of Section 11B of the Act read with



Rule 18 of the CE Rules and Notification No.19/2004-CE (NT) dated 6.9.2004. The rebate of duty is governed by the provisions of Rule 18 of the CE Rules read with the Notification issued thereunder i.e. Notification No.19/2004-CE (NT) dated 6.9.2004. Further the Appellants are required to follow the procedure laid down in the relevant Notification No.19/2004-CE(NT) dated 6.9.2004. Para 2 (b) of the said Notification stipulates that the excisable goods shall be exported within six months from the date on which they were cleared for export from the factory of manufacture or within such extended period as the Commissioner of Central Excise may in any particular case allow.

10. In the instant case the excisable goods were cleared for export from their factory on 29.9.2011. However the said consignments left the country on 24.4.2012, i.e. after six months from the date of clearance. The Appellants had also not obtained any permission from the Commissioner of Central Excise for extending the export period. Therefore, the said rebate claim was rejected by the Adjudicating Authority vide the impugned Order-in-Original.

11. However, the export has taken place and the export proceeds have also been realized is an undisputed fact. Due to some delay in site readiness, the buyer of the Respondents vide letter No. 22090712 requested the Appellants to hold the material. Therefore the said goods were sent to Jawaharlal Nehru Customs House Port, Nhava Sheva, Raigad on 20.03.2012 i.e. within six months from the date of clearance from the factory. The Shipping Bills were generated on the same day, i.e. 20.03.2012, and "let export order" for the consignment was also given on the same date. The Government observes that the Respondents had already completed the formalities required at their end for export. However, due to non-availability of the ship the goods were loaded on the ship on 24.04.2012 and Mate Receipt was prepared by the Shipping Agency on 24.04.2012. The respondents cannot be held responsible for the delay, as the delay was due to extraneous reasons and beyond the control of the respondents and substantial rebates cannot be denied due to the above reasons.



12. Hon'ble Tribunal in the case of M/s Vardhman Spinning & General Mills Ltd vs commissioner of C. Ex. (Appeals) Ludhiana - 2005 (190) ELT 38 (Tri - Del) wherein the Hon'ble Tribunal held that *"in the present case the appellants submitted the shipping bill along with the goods to the Custom authority within the period as extended by the Commissioner (Appeals). The only objection of the Revenue is that the goods were not actually exported within the extended period. As the Appellants handed over the goods to the custom authority within the extended period, therefore the delay in export is not in the hands of the Appellants. The rebate claim cannot be denied on this grounds."* Accordingly the impugned order was set aside and the appeal was allowed. The ratio of this case is squarely applicable to the facts and circumstances of this case and it also follows that the delay in exports can be condoned by Commissioner (Appeals).

13. Hon'ble Tribunal in the case of CCE v/s Birla Tyres 2005 (179) ELT (417) (Tri. Kolkata) wherein it was held that *"if goods were not exported within six months or within extended period, rebate can be granted as there is no loss of revenue"* In Kosmos Healthcare Pvt. Ltd. v/s Asst Commissioner of Central Excise, Kolkata-I '2013 (297) ELT (345) (Cal) The Hon'ble high Court has held that *"extension for export can be granted post export also and the Commissioner would have to take a liberal approach keeping in mind the object of the duty exemption, which is encouragement of exports in case of inordinate unexplained delay or a case where delay has caused a loss to the Government.....with ulterior motivethe delay may not be condoned."* The ratio of the above judgements are applicable to the instant case. The Government agrees that encouragement of exports is the ultimate aim of granting rebate claims and therefore prefers to view the issue of the Respondents not obtaining the permission from the Commissioner of Central Excise for extending the export period as a procedural lapse and rebate claims cannot be denied on this ground.


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14. In view of the foregoing discussions, The government finds that the since in this case the goods were handed over to Customs and let export order was given within the stipulated period, the delay in this case was beyond the control of Respondents. The delay in actual exports has therefore been rightly condoned. Thus the order of Commissioner (Appeals) is liable to be upheld and the instant Revision Application is liable to be dismissed.

14. The Government of India accordingly upholds the Order in Appeal and dismisses the instant Revision Application being devoid of merits.

12. So, ordered.


29.12.17

(ASHOK KUMAR MEHTA)

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

ORDER No. 28/2017-CX (WZ)/ASRA/Mumbai

DATED 29.12.2017

M/s Mather & Platt Pumps Ltd.
Mumbai- Pune Road,
Chinchwad,
Pune : 411 019

True Copy Attested


11.1.18

एस. आर. हिरुलकर
S. R. HIRULKAR
(A-C)

Copy to:

1. The Chief Commissioner of GST & CX, Pune Zone, Pune.
2. The Commissioner (Appeals-I), Central Excise, Pune.
3. The Additional Commissioner, Central Excise, I/C Pune - II division.
4. Sr. P.S. to AS (RA), Mumbai
5. Guard file
6. Spare Copy.

