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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. 198/117/13-RA-CX/810

Date of Issue: 18.01.2018
~~DECEMBER 2017~~

ORDER NO 30/2017-CX(WZ)/ASRA/Mumbai Dated:29th DECEMBER,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 EXCISEACT, 1944.

Applicant: The Commissioner of Central Excise, Mumbai - I, 115,
Central Excise Building, M. K. Road, Churchgate,
Mumbai 400 020.

Respondent: M/s Jay Chemicals 504, Damji Shamji Trade Centre,
Station Road, Vidyavihar(W), Mumbai - 400 086.

Subject: Revision Application filed, by The Commissioner of
Central Excise, Mumbai - I,, against the Order-in-Appeal
No. BPS/88/MI/2013 dated 09.09.2013 passed by The
Commissioner Central Excise(Appeals-I), Mumbai.



ORDER

Facts of the case in brief are that appellants, M/s Jay Chemicals. 504, Damji Shamji Trade Centre, Station Road. Vidhyavihar (W), Mumbai - 400 086 had filed a rebate claim for Rs. 25,994/- on 27.04.2012, in respect of excisable goods cleared from their factory and subsequently exported from Air Cargo Complex, Sahar, on 13.10.2011. The said rebate claim was returned to them on 28.06.2012 elucidating discrepancies, after removing the deficiencies they re-submitted the rebate claim on 18.10.2012. Since the rebate claims were not filed within one year from the date of export, as per Section 11B of the Central Excise Act, 1944 a Show Cause Notice dated 10.12.2012 was issued to the appellants proposing rejection of rebate claim as time barred. After due process of law, the adjudicating authority confirmed the proposal initiated in the Show cause Notice.

2. Aggrieved against the above Order-in-Original the Appellants filed an appeal with the Commissioner (Appeals) on the grounds that they have initially filed their rebate claim in respect of A.R.E.1 No. R-479/2011-12 dated 28.09.2011 on 27.04.2012. The Respondents contended that the date of submission of claim has to be considered as 27.04.2012 and not 18.10.2012 as held by the Adjudicating authority.

3. In the Order in Appeal the Commissioner (Appeals) relying on para 3.2 of Chapter 9 of the CBEC's Excise Manual of Supplementary Instructions, which states "*The Divisional Office will scrutinise the claim, in consultation with Range, and check that the refund application is complete and is covered by all the requisite documents. This should be done, as far as possible, the moment refund claim is received and in case of any deficiency, the same should be pointed out to the applicant with a copy to the Range Officer within 15 days of receipt.*" has concluded that "In such a situation the provision does not state that the date on which the deficiency is removed would be considered as the date of filing of the claim which implies that in spite of the deficiency the rebate claim would be considered to have been filed on the date when it was initially submitted." Therefore, it was concluded



that the date of submission of the claim was 27.04.2012 i.e. when the claim was submitted to the department for the first time and not 18.10.2012. The impugned Order in Original was set aside and the Appeal allowed.

4. Aggrieved by the order of the Commissioner (Appeal) the Applicants have filed this Revision Application on the grounds that

- The Commissioner (Appeals)- Central Excise and Service Tax, Mumbai Zone-I, has erred in setting aside the Order-In-Original, and it is not proper and legal.
- The exporter has filed rebate claim under Section 11B of the Central Excise Act, 1944, for claiming rebate, the exporter is required to submit his claim in the prescribed format and as per the procedure as laid down in Para 2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions.
- The exporter had failed to append the correct copies of the documents required for the rebate claim, therefore on scrutiny the claim was found to be inadmissible. The rebate claim was returned to the exporter along with a deficiency memo and an opportunity was extended to the exporter to rectify the rebate claim and present it within a period of one year. However after removing the deficiency, the said rebate claim was again filed on 18.10.2012. Such claim cannot be construed as resubmitted claim and the date 27.04.2012 cannot be made applicable to freshly submitted claim. Accordingly the rebate claim filed on 18.10.2012 is to be treated afresh and was correctly rejected by the Adjudicating Authority.
- Had the exporter filed the rebate claim within the period of one year from the date of export this claim would have been treated as correctly filed and the benefit of rebate would have been passed on to the exporter but in the instant case the exporter failed to submit the same timely. Therefore the rebate claim was rejected solely on the ground that it is hit by bar of limitation of time.



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- The Relevant date to be considered for refund /rebate claim is well defined and prescribed in the Section 11 B of the Central Excise Act, 1944.
- There is no provision in Law where quasi judicial or judiciary is empowered to amend / rewrite the statute rather they have to decide the issue within the frame work of the statute. If such extension of relaxation is deliberated by quasi judicial authority then there is no need for keeping any time limit in the statute.
- In view of the above, the Order- In —Appeal No. BPS/88/ MI/ 2013 dated 09.09.2013 is not correct legal and proper and therefore be set aside.

5. The personal hearing in the case was held on 20.12.2017, Shri Mukesh N. Mange, Manager appeared on behalf of the Respondent. In his submissions, he stated that they had submitted the rebate claim on 27.04.2012 which were returned by the Excise department pointing out deficiencies and after correcting the problem, resubmitted documents on 18.10.2012. He submitted copies of the rebate claim filed on 27.04.2012, letter of Central Excise department dated 28.06.2012 and the same rebate claim submitted on 18.10.2012. The Respondent requested that the Order in Appeal be upheld. Nobody appeared on behalf of the Applicants.

6. Government has carefully gone through the facts of the case. The export under this rebate claim was effected on 13.10.2011. Respondent filed rebate claim with the Applicant on 27.04.2012 against export of the goods. The aforesaid claim filed on 27.04.2012, was returned to the exporter under Deficiency Memo on 28.06.2012, pointing out the deficiencies contained in the respective rebate claim. The exporter resubmitted the aforesaid rebate claim on 19.10.2012 after removing the discrepancies. The issue to be decided is whether the rebate claim was filed within the prescribed time limits or is time barred.



7. Section 11B (1) of the Central Excise Act, 1944 read with Sub-section 5 of Section 11B and Explanation A and B (a) thereto of the Central Excise Act, 1944 "Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence (including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person". There is no dispute that it is mandated that the rebate claim has to be filed within one year from the date of export.

8. Para 9 of the impugned Order in Appeal states " The Para 3.2 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions states that at the time of receipt of the refund / rebate claim the Divisional Office should check as to whether the claim is complete and covered by all the requisite documents. This para does not permit return back of the claim itself for deficiency therein or for not being accompanied by the requisite documents. It states that in case of deficiency observed after receipt of the claim. The Divisional Office within 15 days of such receipt was required to point out deficiency in the claim to the applicant. The above provision of CBEC's Excise Manual, which was binding on the department officers, only allows returning back of the claim at the time of receipt itself on the ground that supporting documents are not submitted, but does not permit such an action at a later date or solely for certain discrepancies in the claim or in the supporting documents.

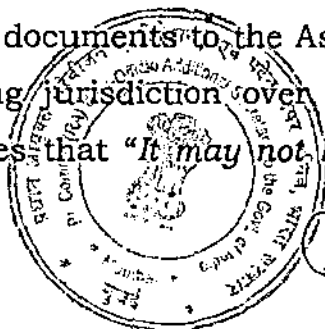


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9. The above para elucidates that the claim should not have been returned to the exporter for not being accompanied by the requisite documents and the Divisional office was required to point out discrepancies in the claim within 15 days. In this regard it is observed that the rebate claims filed by the Appellants on 27.04.2012 were found to be defective due to :- a) Over writing without attestation by the proper Customs Officer. b) Difference in flight dates shown in Original and Duplicate copy of ARE-1; and c) Documents viz. Airway Bill and Packing list were not submitted. The deficiencies mentioned above were not only due to lack of supporting documents, but also deficiencies referred to at a) and b). These can be detected only when detailed scrutiny is undertaken, and when detected the whole claim has to be submitted along with the deficiency memo. Further, in this regard the procedure as laid down in Para 2.4 of Chapter 9 of CBEC's Excise Manual of Supplementary Instructions states as under; "

"It may not be possible to scrutinise the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Incomplete claim will not be in the interest of the Department. Consequently, submission of refund claim without supporting documents will not be allowed. Even if post or similar mode files the same, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed). The claim shall be taken as filed only when all relevant documents are available. In case of non-availability of any document due to reasons for which the Central Excise or Customs Department is solely accountable, the claim may be admitted that the claimant is not in disadvantageous position with respect to limitation period."

10. It is thus clear that the application for the claim of rebate shall be lodged along with all documents to the Assistant/ Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture. The above para also states that *"It may not be possible to scrutinise the claim*



without the accompanying documents, and decide about its admissibility." Thus, rebate claims filed with ineligible documents are liable for rejection and hence the department was right in returning the rebate claim filed on 27.04.2012. The exporter resubmitted the aforesaid rebate claim on 18.10.2012 after removing the discrepancies after the period of one year had elapsed. The claim of the Applicant that the date of submission of rebate claim filed earlier on 27.04.2012, therefore, cannot be accepted and the Order in Appeal is liable to be set aside.

11. Further, it has been held by 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.) 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. In the instant case Commissioner (Appeal) has erred by allowing the extended period beyond 1 year and allowing the violation of Section 11B provision by the exporter.

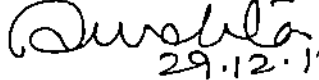
12. There is no provision in Law where quasi judicial or judiciary is empowered to amend / rewrite the statute, rather the issues should be decided within the frame work of the statute. The Commissioner (Appeals-I) has erred by setting aside the impugned Order-in-Original passed by the Adjudicating Authority and accepting the contention of the Respondent in support of their appeal. Therefore the order in Appeal needs to be set aside.

13. The Government holds that since the rebate claims were not filed with original documents within the prescribed time limits. The lower authorities in the order in original have therefore rightly rejected the said rebate claim as time barred.



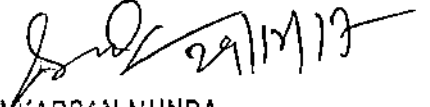
14. The Government, accordingly sets aside the Order in Appeal No. BPS/88/MI/2013 dated 09.09.2013 passed by the Commissioner Central Excise (Appeals-I) Mumbai and allows the instant Revision Application.

15. So ordered.


 29.12.17
 (ASHOK KUMAR MEHTA)
 Principal Commissioner & ex-Officio
 Additional Secretary to Government of India

True Copy Attested

The Commissioner of Central Excise, Mumbai - I,
 115, Central Excise Building,
 M. K. Road, Churchgate,
 Mumbai 400 020.


 29/12/17
 SANKARSAN MUNDA
 Asstt. Commissioner of Custom & C. Ex. (RA)

ORDER No 30/2017-CX (WZ)/ASRA/Mumbai Dated:29th December, 2017

Copy to;

1. M/s Jay Chemicals 504, Damji Shamji Trade Centre, Station Road, Vidyavihar(W), Mumbai - 400 086.
2. The Commissioner Central Excise (Appeals-I), Mumbai.
3. The Deputy/Assistant Commissioner (Rebate) Central Excise, Mumbai-I.
4. Sr. P.S. to AS(RA), Mumbai.
5. Guard File .
6. Spare Copy.

