

**REGISTERED
SPEED POST**



F.No.198/84/2012-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue...12/2/16

ORDER NO. 34/2016-CX DATED 10.02.2016 OF THE GOVERNMENT OF INDIA, PASSED BY SMT. RIMJHIM PRASAD, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944.

SUBJECT : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/291/M-III/11-12 dated 31.01.2012 passed by Commissioner of Central Excise (Appeals), Mumbai -III.

APPLICANT : Commissioner of Central Excise, Mumbai-III.

RESPONDENT : M/s. United Enterprises, Mumbai.

ORDER

This revision application is filed by Commissioner of Central Excise, Mumbai-III, against the Order-in-Appeal No. BC/291/M-III/11-12 dated 31.01.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III, with respect to Order-in-Original passed by the Deputy Commissioner of Central Excise, Wagle-I Division, Mumbai-III. M/s. United Enterprises, Mumbai is the respondent.

2. Brief facts of the case are that M/s. United Enterprises, Mumbai had filed a rebate claim of Rs. 80,508/- for the duty paid on export of their goods under Rule 18 of Central Excise Rules, 2002, which were exported by them. The original authority rejected the rebate claim for simultaneously claiming two benefits viz input credit and drawback claim, which are not admissible to them.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who allowed appeal holding that as the applicant availed only customs portion of drawback, rebate is admissible to them.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant department has filed this revision application under Section 35 EE of Central Excise Act, 1944 before Central Government on the following grounds.

4.1 As per para 15 of Customs Notification No. 84/2010-Cus (N.T.) dated. 17.09.2010 issued under F.No. 609/76/2010-DBK, as regards the expression "when Cenvat facility has not been availed" used in the Schedule to aforesaid Notification, the exporter shall satisfy the following conditions, namely.

(i) The exporter shall declare, and if necessary, establish to the satisfaction of the Assistant Commissioner of Customs or Assistant Commissioner of Central Excise or Deputy Commissioner of Customs or Deputy Commissioner of Central Excise, as the case may be, that no Cenvat facility has been availed for any of the inputs or input services used in the manufacture of export product;

(ii) If the goods are exported under Bond or claim of rebate of duty of central excise, a certificate from the Superintendent of Customs or Superintendent of Central Excise in charge of the factory of production; to the effect that no Cenvat facility has been availed for the goods under export is produced."

In the instant case no such certificate has been produced.

4.2 As regards payment of excise component of All Industry Rates of Drawback, a declaration of non-availment of Cenvat facility is necessary. Manufacturers and merchant-exporters with a supporting manufacturer are required to give a self declaration in the prescribed form that such manufacturers are not registered with central excise and at they do not avail/ have not availed Cenvat facility. In the case

of manufacturers and supporting manufacturers who are registered with Central excise, the fact of non-availment of Cenvat facility shall continue to be confirmed from the ARE-1 filed by them.

4.3 In the instant case, the claimant has submitted details of duty payment particulars made from the manufacturer's Cenvat credit balance account along with the rebate claim. However, it is noticed that the claimant have also filed shipping bill to the Customs Department on which they have claimed drawback.

4.4 Further, as per the guidelines prescribed under Duty Drawback Procedures, Drawback is not admissible if Cenvat Credit is availed. Therefore, to claim duty drawback, the claimant has to certify that they have not availed Cenvat credit as per Cenvat Credit Rules, 2004 to comply with the provisions of Central Excise Duties Drawback Rules, 1995. Hence, party can avail only one benefit either input credit or drawback claim. Thus, simultaneous availment of two benefits is not admissible to them.

4.5 In view of above, M/s. United Enterprises by claiming rebate of duty paid on the exported goods when they have also claimed duty drawback with the Customs Authorities as per Customs and Central Excise Duties Drawback Rules, 1995, the claimant have knowingly claimed both the benefits of rebate of duty as well as duty drawback with an intent to avail undue benefits, which is not legally admissible to them due to the aforesaid reasons.

5. A show cause Notice was issued to the respondent under section 35 EE of Central Excise Act, 1944 to file their counter reply. The respondents vide their written submission dated 28.06.2012 mainly reiterated contents of impugned orders.

6. Personal hearing scheduled in this case on 20.07.2015, 11.08.2015 and 10.09.2015. Hearing held on 20.07.2015 was attended by Shri D.K. Singh, advocate on behalf of the respondent and apart from reiterating contents of impugned orders, relied upon various judgment of Government of India in their favour. The department also filed an application dated 24.03.2015 for condonation of delay for condonation of 4 days in filing appeal beyond three months initial stipulated period, on the following grounds:-

6.1 The Commissioner (Appeals), Mumbai-III, Mumbai Zone-II decided the appeal in favour of the claimant vide Order-in-Appeal No. BC/291/M-III/2011-12 dated 31.01.2012 which was received in the office of the Commissioner, Central Excise, Mumbai-III on 10.02.2012. Hence appeal should have been filed in this case by 09.05.2012.

6.2 As per the provisions of Section 35 EE (1A) of Central Excise Act, 1944 the Revision Application against the orders of Commissioner (Appeals), is required to be

filed within three months from the date of receipt of the Commissioner (Appeals)'s Order.

6.3 Though the Order-in-Appeal was reviewed and application dispatched by this office on 04.05.2012 by Speed Post A.D (within three months from the date of receipt of the impugned order), it appears that, the said Revision Application has received in the office of the Joint Secretary, GOI, New Delhi late by 26 days. The delay of 4 days is due to postal delay even though the Revision Application was sent by Speed Post. Further, due to large number of Order-in-Originals and Appellate Orders, the review section of the Commissionerate was highly overburdened during this period. Further, internal correspondence within the department for getting copies of documents and verification from CFS, Mulund also contributed to delay in filing the Revision Application.

7. Government has carefully gone through the relevant case records available in case files, oral & written submission and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the rebate claim of the respondent was rejected by the original authority. The applicant filed appeal against the Order-in-Original and the Commissioner (Appeals) allow the appeal. Now, the applicant department has filed this Revision Application on grounds mentioned in para (4) above.

9. Government first proceeds to decide the issue of limitation in filing of Revision Applications after the stipulated three months period under Section 35 EE (2) of Central Excise Act 1944, as the applicant department has filed these revision application 4 days after initial stipulated three months period and as such, it is an undisputed fact that the Revision Application has been filed beyond the stipulated period of three months.

9.1 The time limit of filing Revision Application has been specified in Section 35EE(2) *ibid* which reads as under:

"Section 35EE. Revision by Central Government:

(1)

(1A)

(2) An application under sub-Section (1) shall be made within three months from the date of the communication to the applicant of the order against which the application is being made:

***Provided** that the Central Government may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the aforesaid period of three months, allow it to be presented within a further period of three months."*

Further Rule 10(2) of Central Excise (Appeals) Rules, 2001 provides as under:-

"The revision application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer."

From perusal of above provisions, it is clear that stipulated period of filing Revision Application is three months from date of receipt of Order-in-Appeal and is deemed to have been filed only upon receipt of Revision Application in the office of Revision Application Unit. The Revision Application have been filed beyond three months period. This period may be extended by further three months provided sufficient cause has been shown which prevented the applicant from filing Revision Applications in time.

9.2 Government finds that the applicant in their application for condonation of delay has in a general manner mentioned that the delay in filing is due to postal delay even though application was sent by speed post and over burdening of their review section as reason for delay in filing the Revision Application. The applicant has failed to give any documentary evidences in support of their claim for the delay in filing of appeal. Under such circumstances, Government is of the considered opinion that onus to show cause for not filing application is on the applicant who has failed to show sufficient cause that prevented him from filing Revision Application within stipulated period of three months. The Revision Application has been made contrary to the provisions of Section 35EE (2) and is, therefore, liable for rejection.

10. In view of above discussion, Government rejects the revision application as time barred without going into the merits of the case.

11. So, ordered.



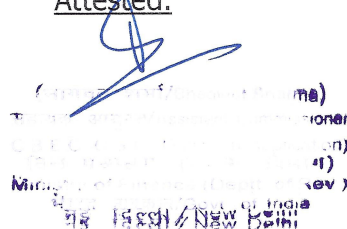
(RIMJHIM PRASAD)

Joint Secretary to the Government of India

Commissioner of Central Excise Mumbai-III
4th Floor, Vardaan Trade Centre, M.I.D.C,
Wagle Industrial Estate,
Thane (West)-400604.

Attested.

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Commissioner of Central Excise (Mumbai-III)
Wagle Industrial Estate, Thane (West)-400604

ORDER NO. 34/2016-CX DATED 10.02.2016

Copy to:

1. M/s. United Enterprises Shop No. 9, Chintamani Apartment, Shankar Lane, S.V.P. Road, Kandivali (West) Mumbai-400067.
2. Commissioner of Central Excise (Appeals), Mumbai Zone-III, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, (Navi Mumbai)-400614.
3. The Assistant Commissioner (Rebate) Central Excise, Mumbai-III, 4th Floor, M.I.D.C, Wagle Industrial Estate, Thane(West)-400604.
4. PA to JS(RA).
- ✓ 5. Guard File.
6. Spare Copy.

Attested



(B.P. Sharma)
OSD (RA)

(B.P. Sharma)
Officer in Charge (Appeals)
Commissioner
Central Excise (Appeals)
Mumbai Zone-III
Ministry of Revenue (Dept. of Rev.)
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15, BSNL New Delhi