



REGISTERED  
SPEED POST

F.No. 195/185/12-RA-Cx  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
(DEPARTMENT OF REVENUE)

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

Date of Issue... 11/12/14

Order No. 376/14-cx dated 09-12-2014 of the Government of India, passed by Smt. Archana Pandey Tiwari, 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, against the Order-in-Appeal No. PIII/RS/382/2011 dated 26.12.2011 passed by Commissioner of Central Excise, (Appeals), Pune

Applicant : M/s. L.G Electronic India Pvt. Ltd.

Respondent : Commissioner of Central Excise, Pune

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## ORDER

This revision application is filed by M/s. L.G. Electronics India Pvt. Ltd, Chennai against the Order-in-Appeal No.PIII/RS/382/2011 dated 26.12.2011 passed by the Commissioner of Central Excise (Appeals), Pune with respect to Order-in- Original passed by the Deputy Commissioner of Central Excise, Pune

2. Brief facts of the case are that the applicant i.e M/s. L.G. Electronics India Pvt. Ltd. Manufacture of Refrigerators, Air Conditioners and Colour TVs. applicant initially filed rebate claim of Rs. 5,11,27,261/-on 19/05/2010 under Rule 18 of the Central Excise Rules, 2002 (CER) read with Notification No. 19/2004-CE(NT) dated 06/09/2004 in respect of goods exported on payment of duty. The said rebate claim was sanctioned vide refund Order-In-Original No.249/Refund/P-VIII/CEX/10-11 dated 13/08/2010. However, during the scrutiny of the documents filed along with the rebate claim it was noticed that the appellant paid the duty at the rate of 8.24% instead of the prevailing rate of 10.3% in respect of 5 ARE-1's After being pointed out, the appellant paid the differential duty of Rs. 2,07,206/-through their CENVAT Credit Account on 21/06/2010 (Rs. 84,200/-) and on 1/7/2010 (Rs. 1,23,006) along with interest. Subsequently, the applicant filed rebate claim of Rs. 2,07,206( 84,200+1,23,006 ) on 21.06.2011. The said rebate claim of Rs. 2,07,206/- was rejected by the Original Authority as time barred for the reason that the export took place from 02/03/2010 to10/03/2010, however, the claim was filed on 21/06/2011, after lapse of more than one year.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

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

4.1 The Commissioner (Appeals) failed to see that the differential duty was paid by the applicants on their own volition after the goods were exported. The differential duty was paid by the applicants on 15.12.2008 after the cars were exported (11.11.2008 & 15.11.2008). In such cases the relevant date should be the date of payment of duty. since the claim was filed on 27.11.2009 within one year from the date of payment of differential duty ( 15.12.2008), the claim is well within time. In the present case the differential duty was paid subsequent to the date on which the goods were exported. Only in cases where the goods are cleared from the factory on payment of duty the relevant date would be one year from the date of export. In all other cases it would be one year from the date of payment of duty.

4.2 The view taken by the lower authorities is not correct. Suppose if differential duty is paid one year after the date of export will that mean that an assessee will not be entitled for refund even if he claims it on the very same day. Such a view of the Department is not correct. In view of the above the Commissioner(Appeals) erred in rejecting the rebate claim for Rs. 28,89,150/- He ought to have held in the present case that the relevant date is one year from the date of payment of duty. The Commissioner (Appeals) failed to see that the differential duty paid by the applicants on their own volition is in the nature of deposit only as there was no demand from the department. Once the payment is in the nature of deposit then in such cases there is no time limit for filing refund application. Even on this ground the Commissioner (Appeals) erred in rejecting the appeal of the applicants.

5 Personal hearing scheduled on 30.10.2014 was attended by Shri Bharat Bhushan Sharma, Manager (Taxation) on behalf of the applicant, who reiterated the grounds of revision application.

6. Government has carefully gone through the relevant case records/available case files, oral and written submission and perused the Order-in-Original and Order-in-appeal.

7. Government observes that the applicant initially exported the goods on payment of duty @ 8.24%. It has been pointed out by the department that the duty was payable @ 10.32%. Accordingly, the applicant paid differential duty to the tune of Rs. 2, 07, 206/- alongwith applicable interest on 21/06/2011 and filed rebate claim of the said amount along with interest of Rs.6,716 vide GAR challans dated 05/07/2010. Commissioner(appeals) rejected the appeal filed by the applicant. Now the applicant has filed this Revision application on the grounds mentioned in Para 4 above.

7.1 Government notes that as per explanation(a) to section 11B, refund includes rebate of duty of excise on excisable goods exported out of India or excisable materials used in the manufacture of goods which are exported. As such the rebate of duty on goods exported is allowed under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004 subject to the compliance of provisions of section 11B of Central Excise Act, 1944. The explanation A of section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since the refunds claim is to be filed within one year from the relevant date, the rebate claim is also required to be filed within one year from the relevant date. As per explanation B(a)(i) of section 11B, the relevant date for filing rebate claim means:-

*"(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable material used in the manufacture of such goods:-*

*(i) If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are load, leaves India, or"*

There is no ambiguity in provision of section 11B of Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 regarding statutory time limit of one year for filing rebate claims.

8 Government noticed that rebate claim filed after one year being time barred cannot be sanctioned as categorically held in the case laws/judgements cited below :

8.1 Hon'ble High Court of Gujarat in its order dated 15.12.2011 in the case of IOC Ltd. Vs. UOI (SCA No. 12074/2011) has held as under:-

*"We are unable to uphold the contention that such period of limitation was only procedural requirement and therefore could be extended upon showing sufficient cause for not filing the claim earlier. To begin with, the provisions of Section 11B itself are sufficiently clear. Sub-section (1) of Section 11E, as already noted, provides that any person claiming refund of any duty of excise may make an application for refund of such duty before the expiry of one year from the relevant date. Remedy to claim refund of duty which is otherwise in law refundable therefore, comes with a period of limitation of one year. There is no indication in the said provision that such period could be extended by the competent authority on sufficient cause being shown.*

*Secondly, we find that the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536 had the occasion to deal with the question of delayed claim of refund of Customs and Central Excise. Per majority view, it was held that where refund claim is on the ground of the provisions of the Central Excise and Customs Act whereunder duty is levied is held to be unconstitutional, only in such cases suit or writ petition would be maintainable. Other than such cases, all refund claims must be filed and adjudicated under the Central Excise and Customs Act, as the case may be. Combined with the said decision, if we also take into account the observations of the Apex Court in the case of Kirloskar Pneumatic Company (supra), it would become clear that the petitioner had to file refund claim as provided under Section 11B of the Act and even this Court would not be in a position to ignore the substantive provisions and the time limit prescribed therein.*

*The decision of the Bombay High Court in the case of Uttam Steel Ltd. (supra) was rendered in a different factual background. It was a case where the refund clam was filed beyond the*

*period of six months which was the limit prescribed at the relevant time, but within the period of one year. When such refund claim was still pending, law was amended. Section 11B in the amended form provided for extended period of limitation of one year instead of six months which prevailed previously. It was in this background, the Bombay High Court opined that limitation does not extinguish the right to claim refund, but only the remedy thereof. The Bombay High Court, therefore, observed as under:*

*"32. In present case, when the exports were made in the year 1999 the limitation for claiming rebate of duty under Section 11B was six months. Thus, for exports made on 20th May 1999 and 10th June 1999, the due date for application of rebate of duty was 20th November 1999 and 10th December, 1999 respectively. However, both the applications were made belatedly on 28th December 1999, as a result, the claims made by the petitioners were clearly time-barred. Section 11B was amended by Finance Act, 2000 with effect from 12th May 2000, wherein the limitation for applying for refund of any duty was enlarged from 'six months' to 'one year'. Although the amendment came into force with effect from 12th May, 2000, the question is whether that amendment will cover the past transactions so as to apply the extended period of limitation to the goods exported prior to 12th May 2000?"*

8.2 Further, it has been held by the Hon'ble Supreme Court in the case of Collector Land Acquisition Anantnag & Others vs. Ms. Katji & Others reported in 1987 (28) ELT 185 (SC) 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.

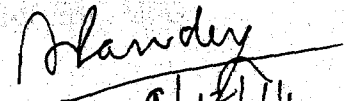
8.3 Hon'ble Supreme Court has also held in the case of UOI vs. Kirloskar Pneumatics Company reported in 1996 (84) ELT 401 (SC) that High Court under Writ jurisdiction cannot direct the custom authorities to ignore time limit prescribed under Section 27 of Customs Act, 1962 even though High Court itself may not be bound by the time limit of the said Section. In particular, the Custom authorities, who are the creatures of the Customs Act, cannot be directed to ignore or cut contrary to Section 27 of Customs Act. The ratio of this Apex Court judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944

judgment is squarely applicable to this case, as Section 11B of the Central Excise Act, 1944 provides for the time limit and there is no provision under Section 11B to extend this time limit or to condone any delay.

9. From above, it is clear that when the rebate claims are filed after stipulated one year as mentioned in Section 11B of the Central Excise Act, the rebate claims are liable to be rejected on limitation. Though there is specific provision regarding time limit of filing rebate claim, there is no specific provision of filing rebate claim within 1 year from date of payment of duty as contested by the applicant. Under such Circumstances, Government finds that original authority has rightly rejected this rebate claim which was filed beyond stipulated one year period and is clearly hit by limitation clause. As such it is rightly rejected and government does not find any infirmity in the impugned order-in-appeal upholding the rejection of said claim as time barred.

10. The revision application is thus rejected in the terms of the above.

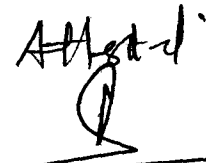
11. So, ordered.



(Archana Pandey Tiwari)

Joint Secretary to the Govt. of India

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Tal. - Shirur,  
District - Pune - 412 220



(Bhagwat Sharma)  
सहायक वित्त आयुक्त (Joint Commissioner)  
CBEC-USE (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार/Govt. of India  
110 दिल्ली / New Delhi

Order No. 376/14 - CX dated 09-12-2014

Copy to:

1. Commissioner of Central Excise, Pune - III Commissionerate, 41 / A, ICA House, Sassoon Road, Opp. Wadia College, Pune - 411 001
2. The Commissioner (Appeals), Central Excise, Pune - III Commissionerate, 41/A, ICA House, Sassoon Road, Opp. Wadia College, Pune - 411 001
3. The Assistant Commissioner, Pune - VIII Division, Pune.
4. S/Shri Lakshmi Kumaran & Sridharan, Attorneys, 104, Kakad Chambers, 132, Dr. Annie Besant Road, Worli, Mumbai - 400 018
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED



(B.P. SHARMA)  
OSD (REVISION APPLICATION)