



REGISTERED  
SPEED POST

F.No. 195/463/11-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.....12/12/14.....

Order No. 378/14-cx dated 11-12-2014 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. 16/2011 dated 23.2.2011 passed by Commissioner of Central Excise, (Appeals), Chennai

Applicant : M/s. Hyundai Motor India Ltd.

Respondent : CCE Chennai

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## **ORDER**

This revision application is filed by M/s Hyundai Motor India Ltd., Sriperumbudur, Tamil Nadu against the order-in-appeal, No. 1520 (Appeals) LTU, with respect to order-in-original No. LTUC/71/2010 (AC) dated 26.02.2010 passed by Assistant Commissioner of Central Excise, LTU, Chennai.

2. Brief facts of that the case are the applicant has filed their rebate claim dated 27.11.2009 for rebate of duty of excise paid at specific rate @ 15,000/- per car, education cess, secondary higher education cess for Rs.46,81,350/- claimed to have been paid by them on 15.12.2008 on clearance of 303 cars for export, under various ARE-1s.

2.1 On scrutiny it was noticed that in respect of 10 ARE-1s, the ships in which the 187 cars were loaded, left India on 11.11.2008 and 15.11.2008 and the claim for rebate was filed on 27.11.2009, i.e. after one year of the relevant date under Section 11B of Central Excise Act, 1944.

2.2 A show cause notice dated 22.01.2010 has been issued to the taxpayer to show cause as to why a part of their claim for Rs.28,89,150/- should not be rejected as time barred in terms of Section 11B of Central Excise Act, 1944.

2.3 After due process of law, the lower adjudicating authority sanctioned an amount of Rs.17,92,200/- and rejected a part of claim of Rs.28,89,150/- as time barred under Section 11B of the Central Excise Act, 1944 read with Rule 18 of the Central Excise Rules, 2002 and Notification No. 19/2004-CE(NT) dated 6.9.2004.

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 application 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.

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.

4.3 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 in this case held on 21.03.14 at Chennai and again on 30.10.2004 at New Delhi. The hearing was attended by Shri B.C. Dutta, Sr. General Manager, Taxation, on behalf of the applicant who reiterated the grounds of revision application. The applicant further vide their written submission dated. 05.11.2014 mainly reiterated contents of impugned orders.

6. 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.

7. On perusal of records, Government observes that the rebate claim of Rs. 28,89,150/- in respect of 10 ARE-1 pertaining to 187 cars exported was rejected by original authority as time barred, having been filed after 1 year from the date of exports. The commissioner (Appeals) upheld the impugned Order-in-Original. Now, the applicant has filed this Revision Application on grounds mentioned in Para(4) above.

8. 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 refund 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 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 and the relevant date for this purpose.

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

9.1 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."*

9.2 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.

9.3 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 provides for the time limit and there is no provision under Section 11B to extend this time limit or condone any delay.

10. 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.

11. The revision application is thus rejected in the terms of the above.
12. So, ordered.

*Archana Pandey*

(Archana Pandey Tawari)

Joint Secretary to the Govt. of India

M/s. Hyundai Motor India Ltd.,  
Plot No. H-1, SIPCOT Industrial Park,  
Irrungattukottai, Kancheepuram District  
Tamilnadu -602 105.

*Attested*

*[Signature]*

(भागवत शर्मा/Bhogwat Sharma)  
सहायक आयुक्त/Assistant Commissioner  
CBEC-OSD (Revision Application)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt of Rev.)  
भारत सरकार/Govt of India  
नई दिल्ली / New Delhi

Order No. 378/14-CX dated 11-12-2014

Copy to:

1. The Commissioner of Central Excise & Service Tax, Large Taxpayer Unit,
2. Chennai, 1775 Jawahar Lal Nehru Inner Ring Road, Annanagar Western Extension, Chennai- 600 101
3. The Commissioner of Central Excise & Service Tax, (Appeals), Large Taxpayer Unit, Chennai, 1775 Jawahar Lal Nehru Inner Ring Road, Annanagar (West) Chennai- 600101
4. The Assistant Commissioner of Central Excise, Large Taxpayer Unit, 1775 Jawahar Lal Nehru Inner Ring Road, Annanagar West, Chennai- 600 101
5. Guard File.
6. PS to JS (RA)
7. Spare Copy

ATTESTED



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