



REGISTERED  
SPEED POST

**F.No.195/588/2012-RA**  
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...15/5/15

ORDER NO. 10/2015-Cx DATED 14.05.2015 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.49/CE/APPL/DLH-IV/2012 dated  
25.04.2012 passed by Commissioner of Central  
Excise (Appeals) Delhi-IV, Faridabad, Haryana

APPLICANT : M/s Poly Medicure Ltd., Ballabgarh, Faridabad

RESPONDENT : Commissioner of Central Excise, Delhi-IV, Haryana

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ORDER

This revision application is filed by M/s Poly Medicure Ltd., Ballabgarh, Faridabad (hereinafter referred to as the applicant) against the Order-in-Appeal No.49/CE/APPL/DLH-IV/2012 dated 25.04.2012 passed by Commissioner of Central Excise (Appeals) Delhi-IV, Faridabad, Haryana with respect to Order-in-Original No.770/R-IV/2011-12 dated 18.11.2011 passed by the Assistant Commissioner of Central Excise, Division-III, Faridabad.

2. Briefly stated facts of the case are that the applicant filed a rebate claim with the jurisdictional Assistant Commissioner of Central Excise on 26.04.2011 under Rule 18 of the Central Excise Rules, 2002 for the Medical Disposable items. Scrutiny of the documents filed by the applicant revealed that the rebate claim was filed beyond the period of stipulated one year from the date of export goods shipped on Board/Bill of Lading or Let export order given. The details thereof are as under:

ARE 1 No. & Date	Shipping Bill No. & Date	Let Export date	Bill of lading date
427 dt. 20.01.2009	1117591 dated 29.01.2009	29.01.2009	02.02.2009
515 dt. 17.03.2009	3664338 dt. 21.03.2009	21.03.2009	21.03.2009
539 dt. 30.03.2009	1951274 & 1951266 dt. 02.04.2009	02.04.2009	12.04.2009
14 dt. 21.04.2009	1954645 dt. 17.04.2009 & 1954903 dt. 8.04.2009	22 & 23.04.2009	01.06.2009
15 dt. 22.04.2009	3734322 dt. 25.04.2009	27.04.2009	24.04.2009
60 & 61 dt. 13.05.2009	1961050 dt. 12.05.2009	14.05.2009	20.05.2009
150 dt. 15.06.2009	1971108 dt. 16.06.2010	18.06.2009	23.06.2009
151 dt. 15.06.2009	1971107 dt. 16.06.2009	18.06.2009	23.06.2009
31 dt. 31.07.2009	1985587 dt. 04.08.2009	10.08.2009	14.08.2009



The adjudicating authority, vide impugned order, rejected the rebate claim of the applicant on the ground that the same had been filed beyond the period of one year from the date of export.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals) who rejected the appeal and upheld the impugned Order-in-Original.
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 lower authorities have not been justified in not allowing rebate of duty under rule 18 of Central Excise Rules 2002, of duty paid on clearance of goods for export when claim for rebate of duty was made beyond one year.
  - 4.2 There is no dispute that goods cleared for export were, in fact, exported within the specified period. It is only the claim for rebate of duty along with the proof of export, which was submitted beyond the period of one year from the date of export. The authorities below have rejected the claim of rebate as barred by time. Even the contention of the applicant that they may be allowed re-credit of duty in cenvat credit account, has not been accepted. The exporter should not be denied substantial benefit only for procedural delay.
  - 4.3 The applicant had also executed UT-1 undertaking for clearing goods for export without payment of duty under rule 19 and in case of such export, no amount of duty was required to be paid. Now, when the applicant cleared goods under claim for rebate on payment of duty, the same is in the nature of security which has to be refunded on proof of export of goods, just as re-credit in running bond account.
  - 4.4 When the bond amount has to be re-credited on export of goods, the same treatment may be given to the amount debited in cenvat account instead of UT-1. The exporter should not be made to suffer for procedural lapse if any, when the fact of actual export of goods stands satisfied.



4.5 There is no period of limitation for claiming rebate of duty under rule 18. No period of limitation has also been prescribed under Notification No.42/2001 dated 26-06-2001, which has been issued under the said rule prescribing the procedure to be followed for claiming rebate of duty. There is no condition in the said rule or notification that period of limitation as contained in section 11B of the Act shall apply.

4.6 The law stand settled that the limitation of section 11B of the Act should not be applied for rebate claim filed under rule 18 of the Rules. The reliance is placed on the judgment of the Bombay High Court in the case of Uttam Steels Limited V/S U.O.I. reported as 2003(158) ELT 274(Bombay).

5. The Respondent Department in response to the revision application under its letter C. No. CE-20/R-XVII/RA/Polymedicure/52/2012 dated 25.09.2012 has made the following submission:

5.1 Rule 18 and Notifications framed thereunder cannot be read independent of requirement of limitation period of one year prescribed in Section 11B of Central Excise Act, 1944. Section 11B ibid deals with claim for refund of duty and as per explanation given in this Section it is stated that refund includes rebate of duty.

5.2 Further, it is submitted that before exporting the party had the option to export under Rule 18 or 19 of Central Excise Rules, 2002. Since the party opted for exporting under Rule 18, it becomes bound to file rebate claim within stipulated time period of one year from the date of export. The instant case is of exports under Rule 18 and cannot be compared to Rule 19. The presumptions made by the party are not correct and re-credit in Cenvat account cannot be allowed. The Order-in-Appeal passed by Commissioner (Appeals) may be upheld.

6. Personal hearing scheduled in this case on 01.04.15 was attended by Shri D.K.Tyagi, Advocate on behalf of the applicant. A written submission was made reiterating the grounds of Revision Applications and reliance was placed on the case laws cited in 1996 (84)ELT 360, 1997(95)ELT 372, 1990(46)ELT 543, 2006(201)ELT 454, 1996(82)ELT 177(Bom), 2004(169)ELT 108(Tri-Mumbai), 2007(218)ELT



174(Raj), 2012(278)ELT 421 (GOI), 2013(295)ELT 129 (GOI), 2013 (295)ELT 148 (GOI), 2014 (314)ELT 961(GOI). Nobody attended hearing on behalf of department.

7. Government has carefully gone through the relevant case records and perused the impugned Order-in-Original and Order-in-Appeal.

8. Government observes that the rebate claim for excise duty paid on excisable goods exported out of India under Rule 18 of Central Excise Rules, 2002 was filed on 26.4.2011 after the lapse of time limit of one year as stipulated under Section 11B of Central Excise Act 1944 as is evident from details in para 2. These facts are not in dispute.

8.1 Adjudicating authority had rejected the rebate claim as time barred. The Commissioner(Appeals) also held the claim as hit by limitation and also rejected applicant's claim for re-credit of rejected amount to Cenvat credit account. Now applicant has contended that export of duty paid goods is not in dispute and these rebate claims may be allowed or alternatively the amounts may be allowed to be re-credited in the Cenvat Credit Account.

9. Government observes that the condition of limitation of filing the rebate claim within one year under Section 11B of the Central Excise Act, 1944 is a mandatory provision. 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) to Section 11B has clearly stipulated that refund of duty includes rebate of duty on exported goods. Since 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 materials 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"*

Government finds 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.

10. Applicant has contended that delay in filing rebate claim is a procedural lapse and same may be condoned as the substantial benefit cannot be denied to them due to procedural infractions. In this regard, Government observes that filing of rebate claim within one year is a statutory requirement and not a merely procedural requirement. The statutory requirement can be condoned only if there is such provision in the statute itself. Since there is no provision for condonation of delay in terms of Section 11B *ibid*, the rebate claim has to be treated as time barred.

11. Government also notes that rebate claims filed after one year being time barred cannot be sanctioned as categorically held in the case laws/judgments cited below:-

11.1 The Supreme Court in the case of Collector of Central Excise, Chandigarh v/s Doaba Co-op Sugar Mills Ltd. as reported in 1988 (37) E.L.T.478 (S.C.) has held in para 6 as under:

"It appears that where the duty has been levied without the authority of law or without reference to any statutory authority or the specific provisions of the act and the Rules framed there under have no application, the decision will be guided by the general law and the date of limitation would be the starting point when the mistake or the error comes to light. But in making claims for refund before the departmental authority, an assessee is bound within four corners of the Statute and the period of limitation prescribed in the Central Excise Act and the Rules framed there under must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the Act will prevail."

11.2 The Hon'ble High Court of Gujarat in the case of Alembic Glass Ind. Ltd. v. Union of India reported at 1992 (60) ELT.64 (Guj.) held in para 11, as under:



"That the claim was required to be made within the prescribed period of six months from the relevant date. The relevant date would be the date on which the goods re-entered the factory. In this case it would be January 4, 1988 and January 9, 1988 as provided in sub clause (b) of Clause B of Explanation to Section 11 B of the Act. Thus the period of six months would expire on July 8, 1988 while the claim has been preferred on March 29, 1989. The Assistant Collector is bound by the provisions of the statute. This is the law laid down by the Supreme Court in the case of Collector of Central Excise, Chandigarh v. M/s. Doaba Co-op. Sugar Mills Ltd. reported in AIR 1988 SC 2052 = 1988 (37) E.LT.478 (S.C.). In that case the department sought to invoke the provisions of Section 11A of the Act and attempted to make recovery of the amount of duty after the period of limitation prescribed under Section 11A of the Act. The Supreme Court inter alia observed that "But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the rules framed there under must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act. If the proceedings are taken under the Act by the department, the provisions of limitation prescribed in the act will prevail". The Supreme Court referred to its earlier decision in the case of Miles India v. Assistant Collector of Customs - 1987 (30) ELT.641 (S.C.). In that case the Supreme Court observed that the Customs Authorities were justified in disallowing the claim for refund as they were bound by the period of limitation provided under the relevant provisions of the Customs Act, 1962. Similarly in the instant case also, the Asstt. Collector, who decided the refund claim was bound by the provisions of the Act and the Rules. Therefore, the refund claim rejected on the ground that the claim is made beyond the period of limitation is also eminently just and proper."

11.3 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 act 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 to extend this time limit.

11.4 The Hon'ble CESTAT, South Zonal Bench, Chennai in the case of Precision Controls vs. Commissioner of Central Excise, Chennai 2004 (176) ELT 147 (Tri.-Chennai) held that under law laid down by Apex Court the authorities working under Central Excise Rules, 1944 and Customs Act, 1962 have no power to relax period of limitation under Section 11B ibid and Section 27 ibid and hence powers of Tribunal too, being one of the authorities acting under aforesaid Acts, equally circumscribed in regard to belated claims – Section 11B of Central Excise Act, 1944 – Rule 12 of erstwhile Central Excise Rules, 1944 – Rule 18 of the Central Excise Rules, 2002. This Tribunal, acting under the provisions of the Central Excise Act, has no equitable or discretionary jurisdiction to allow any such claim de hors the limitation provisions of Section 11B.

11.5 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.

11.6 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) as reported in 2012 (281) ELT 209 (Guj.) 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 11B, 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 claim 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?"



11.7 In a very recent judgement, Hon'ble High Court of Bombay in the case of Everest Flavours Ltd. Vs. UOI reported as 2012 (282) ELT 481 (Bom) vide order dated 29.03.2012 dismissed WP No. 3262/11 of the petitioner and upheld the rejection of rebate claim as time barred in terms of section 11B of Central Excise Act 1944 by holding that where the statute provides a period of limitation, in the present case in Section 11B for a claim for rebate, the provision has to be complied with as a mandatory requirement of law.

12. In view of the above position, Government observes that the rebate claim filed after one year's time limit stipulated under Section 11B of Central Excise Act, 1944 read with Rule 18 of Central Excise Rules, 2002 is clearly hit by time limitation clause and cannot be entertained. 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.

13. Government notes that the applicant's request for re-credit of cenvat credit amount, if rebate claim is found inadmissible, was also set aside in the impugned order as without authority of law. Government had in past allowed re-credit of duty paid in Cenvat Credit account in some cases as relied upon by the applicant where rebate was denied as duty was not payable or excess duty was paid, which was treated as voluntary deposit with Government. Such voluntary deposit was allowed to be re-credited as the Government could not retain the same without any authority of law. Government observes that the facts of the instant case are absolutely different. The amount for which rebate is claimed is in no way in the nature of a voluntary deposit but in the nature of duty which was paid in accordance with law as the same was payable at the relevant time. It is not disputed that duty was paid on exported goods in accordance with law and the same was payable while clearing goods for export under rebate claim. Once the rebate claim is rejected as time barred the allowing of re-credit in Cenvat account of duty paid at the time of clearance will be legally untenable as it would amount to allowing refund, which was actually time barred. Therefore, rejection of rebate as time barred in accordance with law does not at the same time, entitle the applicant to get re-credit of duty paid in cenvat account.



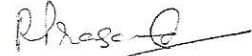
Government finds no infirmity in the impugned Order-in-Appeal holding the contention of the applicant seeking re-credit of the CENVAT credit as without authority of law.

14. Government finds that the applicant has cited various case laws in support of his contention. However, facts of the cases cited by the applicant are not identical to this case and hence, ratio of those cases is not applicable to this case. Further, Government observes that identical issue has been decided by the Government vide Revision Order No.1170/2011-Cx dated 5.9.2011, the ratio of the same is squarely applicable to this case.

15. In view of above, Government finds no infirmity in the order of Commissioner (Appeals) and hence upholds the same.

16. The revision application is thus rejected being devoid of merits.

17. So ordered.



( Rimjhim Prasad )

Joint Secretary (Revision Application)

M/s Poly Medicure Ltd.  
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HSIDC Industrial Estate,  
Ballabgarh, Faridabad

ATTESTED



(Shaikat Ali अली)

Under Secretary to the Government of India


(SHAIKAT ALI)  
अधीन-सचिव (राजस्व विभाग)  
Under Secretary (RA)  
वित्त मंत्रालय (राजस्व विभाग)  
Ministry of Finance (Deptt. of Rev.)  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi



Order No. 10/2015-Cx dated 14.05.2015

Copy to:

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2. Commissioner of Central Excise (Appeals) Delhi-IV, CGO Complex, NH-IV, Faridabad
3. The Assistant Commissioner of Central Excise, Division-IV, Faridabad
4. PA to JS(RA)
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(Shaukat Ali)

Under Secretary to the Government of India