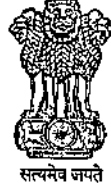


REGISTERED SPEED POST



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, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F. No. 195/889/13-RA | 2309

Date of Issue:- 06/12/2018

ORDER NO. 402 /2018-CX(WZ)/ASRA/MUMBAI DATED 30.11.2018
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 THE CENTRAL
EXCISE ACT, 1944.

Sl.No.	Revision Application No.	Applicant	Respondent
1	195/889/13-RA	M/s Hildose	Commissioner, Central Excise, Navi Mumbai

Subject: Revision applications filed under section 35EE of the Central Excise Act, 1944, against the Order in Appeal No. SDK/146/RGD(R)/2013-14 dated 23.08.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

ORDER

The Revision application is filed by M/s Hildose India Pvt. Ltd. situated at Shivam Chambers, 106/108, 1st floor, S.V. Road, Goregaon (West), Mumbai - 400 062 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. SDK/146/RGD(R)/2013-14 dated 23.08.2013 passed by Commissioner of Central Excise (Appeals) Mumbai-III.

2. Brief facts of the case are that the applicant are merchant exporter and have filed nineteen claims as mentioned below in respect of the goods exported by them through JNPT :-

Sr. No.	RC No.	RC Date	Amount of Rebate (Rs.)	Date of payment of Refund	Period of delay in payment (No. of days)
1	24204	30.12.2009	56,856	17.06.2010	80
2	24205	30.12.2009	1,15,986	17.06.2010	80
3	13536	23.09.2009	1,06,790	27.01.2010	36
4	13537	23.09.2009	60,152	27.01.2010	36
5	13539	23.09.2009	1,15,986	27.01.2010	36
6	13540	23.09.2009	1,02,341	27.01.2010	36
7	16603	28.10.2009	1,07,532	13.12.2010	320
8	3693	21.05.2009	4,507	25.03.2010	217
9	9666	06.08.2009	20,600	04.02.2010	91
10	13538	23.09.2009	5,686	27.01.2010	35
11	23998	25.11.2009	4,47,741	17.06.2010	113
12	23999	25.11.2009	72,100	17.06.2010	113
13	24000	25.11.2009	26,533	17.06.2010	113
14	24201	30.12.2009	22,742	17.06.2010	80
15	24202	30.12.2009	34,114	17.06.2010	80
16	24203	30.12.2009	45,485	17.06.2010	80

17	24206	30.12.2009	31,609	17.06.2010	80
18	24207	30.12.2009	11,371	17.06.2010	80
19	9665	06.08.2009	3,008	17.06.2010	80

3. The applicant vide their letter Ref. No. HIL:08 dated 28.05.2012 had requested the Deputy Commissioner (Rebate), Central Excise, Raigad to pay the interest under Section 11BB of the Central Excise Act, 1944 in respect of *Twenty One* rebate claims sanctioned beyond the stipulated period of three months from the date of submission of the claims. Out of these *Twenty One* claims referred in the said letter, they have been sanctioned interest on the two (02) claims. The remaining nineteen claims are detailed as above.

4. The Adjudicating Authority vide Order in Original No. 387/12-13/DC(Rebate)/Raigad dated 09.05.2013 has rejected the claim of interest in respect of said nineteen rebate claims on the following grounds :-

4.1 the claim for interest has been made after a period of one year from the date of sanction of the claims.

4.2 though there is no time limit prescribed for demand / claim of interest on rebate, it is only reasonable that the period of limitation that applies to a claim for the principal amount should also apply to the claim of interest thereon. As the limit for claim of rebate / refund as prescribed under section 11B of the Central Excise Act, 1944 is one year, the same time limit also applies to the claims of interest thereon.

4.3 it was also observed that the claim of interest was made against the orders in originals which have not been challenged by the claimant before the Commissioner (Appeals) for non grant of interest.

5. Being aggrieved, the applicant filed appeal before Commissioner (Appeals), Central Excise, Mumbai - III. The Appellate Authority upheld the order in original with following observations :-

5.1 the appellant was required to avail the remedy available under Section 35 of CEA 1944 by filing appeal with the Commissioner (Appeals) within

the time limit provided therein. This is a mandatory requirement to seek relief.

- 5.2 Larger Bench of the Hon'ble Tribunal in the case of M/s Avis Electronics – 2000(117)ELT 571 Tri-Lb held as under :-

"Interpretation of statute- When a particular thing is directed to be performed in a manner prescribed by Rules, it should be performed in that manner itself and not otherwise" .

- 5.3 the revisionary authority at Para 8 of the Oder No. 604/12-CX dated 25.05.2012 in the case of M/s Reliance Industries Ltd. has categorically stated that filing of appeal against the rebate sanctioning order is a mandatory & legal requirement to seek relief

6. Being aggrieved and dissatisfied with the impugned order in appeal, the applicant has filed this Revision Application on the following grounds that :

- 6.1 The interest payment is liability of the department and it cannot be avoided under any circumstances.
- 6.2 CBEC circulars are binding on the department as held in innumerable judicial pronouncements. As per the circular no. 670/61/2002-CX dated 01.10.2002, the jurisdictional Central Excise Officers are not required to wait for instructions from any superior officers or to look for instructions in the orders of higher appellate authority for grant of interest. Hence, the liability to pay interest is attracted automatically whenever refunds are not carried out within 90 days for whatever reason.
- 6.3 The Supreme Court in case of M/s Ranbaxy Laboratories Ltd. vs. UOI & others in Civil Appeal No. 6823 of 2010 has categorically ruled that interest after stipulated period is payable up to the date of payment.

7. A Personal hearing held in this Revision Application was attended by Shri Rajeev Gupta, Advocate on behalf of the applicant. They reiterated the submission filed and pleaded that in view of the same, the Revision Application may be allowed and O-I-A be set aside.

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

9. The Government observes that Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Government also finds that as per the Board Circular No.670/61/2002-CX dated 01.10.2002 the provisions of section 11BB of Central Excise Act, 1944 are attracted automatically for any refund sanctioned beyond a period of three months. In the instant case, the Government finds that the rebate claims filed by the applicant were sanctioned by the Rebate Sanctioning Authority after expiry of period of three months from the date of filing the same. The government also finds that neither adjudicating authority nor appellate authority have different opinion than the these observations. The is evident from the fact that the Rebate Sanctioning authority had sanctioned the interest on delayed rebate claims in respect of two cases out of total 21 claims filed by the assessee.

10. Therefore, the basic issue involved in the instant is regarding the remedial action that can be adopted by claimant to seek relief when the rebate sanctioning authority has erred by not sanctioning interest on refund claims sanctioned beyond stipulated period of three months from the date of filing of the same.

11. The Government holds that the case laws referred by the applicant in their submission are mostly dealing with the relevant date of sanctioning the interest under Section 11BB of the Central Excise Act, 1944 to the claimant and the ratio discussed there under is not applicable in the instant case.

12. The Government finds that the Rebate Sanctioning Authority sanctions the rebate claim filed by the claimant under Section 11B of the Central Excise Act, 1944 by passing the order and any person aggrieved by such order passed may appeal to the Commissioner of Central Excise (Appeals) challenging the said decision or may seek any other relief not sanctioned / granted to him within a time limit provided therein. In the instant case, the appellate authority has rightly mentioned in

impugned order that in case of M/s Reliance Industries Ltd. it has been categorically stated that filing of appeal against the rebate sanctioning order is a mandatory & legal requirement to seek relief if they were deficient in granting interest. Also at para 11 of the said order it is explicitly mentioned that the rebate sanctioning order wherein interest claim was not allowed, if not challenged in appeal attains finality and therefore it is not permissible to reopen the issue by way of filing the instant application to claim the interest.

13. In view of above discussion, the Government holds that the applicant is not entitled to claim interest under Section 11 BB of the Central Excise, Act, 1944 as the same is hit by time limit prescribed under law. The Revision Application is accordingly dismissed being devoid of any merits.

14. The Revision application is accordingly dismissed.

15. So ordered.



(ASHOK KUMAR MEHTA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 402/2018-CX (WZ) /ASRA/MUMBAI

DATED 30.11.2018

To

M/s Hildose.
Shivam Chambers,
106/108, 1st floor, S.V. Road,
Goregaon (West), Mumbai - 400 062

Copy to :

1. The Commissioner of CGST & CX, Raigad, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai - 410 206.
2. The Commissioner of CGST & CX (Appeals-II), 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012.
3. The Deputy / Assistant Commissioner of (Rebate), CGST & CX, Plot No. 1, Sector-17, Khandeshwar, Navi Mumbai - 410 206.
4. Sr. P.S. to AS (RA), Mumbai.
5. Guard File.
6. Spare copy.