

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  
8<sup>th</sup> Floor, World Trade Centre, Cuffe Parade,  
Mumbai- 400 005

F. No. 195/888/13-RA

Date of Issue:- 06/12/2018

ORDER NO. 403 /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	195/888/13-RA	M/s Chemagis India Pvt. Ltd.	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/147/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 Chemagis India Pvt. Ltd. situated at Shivam Chambers, 106/108, 1<sup>st</sup> floor, S.V. Road, Goregaon (West), Mumbai – 400 062 (hereinafter referred to as the 'applicant') against the Orders-In-Appeal No. SDK/147/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 sixteen 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	No. of days delayed
1	15280	19.10.2010	3,85,220	12.04.2011	83
2	5175	07.06.2010	3,61,530	14.09.2010	7
3	5176	25.03.2010	2,89,224	14.09.2010	81
4	32004	25.03.2010	2,85,516	31.08.2010	67
5	32005	25.03.2010	2,85,516	31.08.2010	67
6	32006	25.03.2010	2,89,224	31.08.2010	67
7	32007	25.03.2010	2,81,994	31.08.2010	67
8	32008	25.03.2010	2,60,301	31.08.2010	67
9	32009	25.03.2010	2,89,224	31.08.2010	67
10	24199	30.12.2009	2,85,516	30.04.2010	31
11	24200	30.12.2009	2,85,516	30.04.2010	31
12	13535	23.09.2009	2,44,728	08.02.2010	47
13	13534	23.09.2009	2,70,684	08.02.2010	47
14	5681	17.06.2009	2,85,516	05.10.2009	18
15	5680	17.06.2009	3,56,895	05.10.2009	18
16	16604	28.10.2009	2,70,684	17.02.2010	20

3. The applicant vide their letter Ref. No. CIPL: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 eighteen rebate claims sanctioned beyond the stipulated period of three months from the date of submission of the claims. Out of these eighteen claims referred in the said letter, they have been sanctioned interest on the two (02) claims. The remaining sixteen claims are detailed as above.

4. The Adjudicating Authority vide Order in Original No. 257/12-13/DC(Rebate)/Raigad dated 23.04.2013 has rejected the claim of interest in respect of said sixteen 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 18 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.

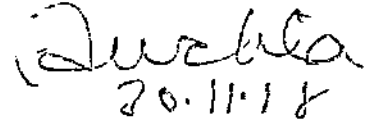
12. The Government finds that the Rebate Sanctioning Authority sanctions the rebate claim filed by the claimant under Section 11B of the Central Excise Act, 1944 by passing the order and any person aggrieved by such order passed may appeal to the Commissioner of Central Excise (Appeals) challenging the 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 application for interest claim.

13. In view of above discussion, the Government holds that the applicant is not eligible 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, therefore, should be dismissed as the same is devoid of any merits.

14. The Revision application is accordingly dismissed.

15. So ordered.

  
20.11.18

(ASHOK KUMAR MEHTA)  
Principal Commissioner & Ex-Officio  
Additional Secretary to Government of India.

To

M/s Chemagis India Pvt. Ltd.  
Shivam Chambers,  
106/108, 1<sup>st</sup> 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), 9<sup>th</sup> 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.