

**REGISTERED  
SPEED POST**



**F.NO. 195/595/12-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

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

Date of Issue...18/5/16...

**ORDER NO. 60/2016-CX DATED 11.05.2016** 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.BC/334/m-111/11-12 dated 27.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II.

Applicant : M/s Inglobe Exports, Mumbai.

Respondent : Commissioner of Central Excise, Mumbai-II .

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## **ORDER**

This Revision Application is filed by the applicant Inglobe Exports, Mumbai against the Order-in-Appeal No.BC/334/M-111/11-12 dated 27.02.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect to Order-in-Original passed by the Maritime Commissioner of Central Excise, Mumbai-III.

2. Brief facts of the case are that the applicant filed rebate claims under Rule 18 of Central Excise Rules, 2002 read with Notification No.19/2004-CE(NT) dated 06.09.2004. The rebate was allowed to the applicant.

3. Being aggrieved by the said Order-in-Original, department filed appeal before Commissioner (Appeals), on the ground that as the applicant has availed drawback, allowing rebate will amount to double benefit, which is not allowed. Commissioner (Appeals) allowed department's appeal.

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 Commissioner (Appeals) erred in rejecting the rebate claim without appreciating the fact that applicants are claiming rebate of duty paid on final product & not the rebate on inputs used in the manufacture of export goods. Commissioner (Appeals) proceeds on the presumption that the exporters cannot claim "Duty Drawback" on the inputs used in the production of export goods and "Rebate of duty paid on the final products" simultaneously. This view is not supported by any legal submission. Applicants submit that the exporters are eligible for "Duty Drawback" on inputs used in the manufacture of export goods if the same is covered in the Customs & Central Excise Duty Drawback Rules 1995 at the rate prescribed in the drawback schedule. They are also eligible for "Rebate of duty paid on the final products" as these are the two sets of incentives covered under Rule 18 of Central Excise Rules 2002. The only restriction in 'Duty Drawback' is that the drawback will be restricted to Customs component only if the manufacturer of final product had availed cenvat credit on the inputs used in the export production. The said rule covers both duty drawback on inputs used in manufacture of export goods as well as the rebate on the duty paid on the final products. Commissioner (Appeals) is mixing up input stage duty drawback with the 'final product rebate' in rejecting the rebate claim, which is legally not sustainable and therefore, order is liable to be quashed & set aside.

4.2 It is very clear from the condition (6) of Notification No.84/2010-Cus(NT) dated 17.09.2010 that where the rate shown is same, it shall mean that the same relates to only customs component and the rebate is available irrespective of whether the exporter has availed of Cenvat or not. Commissioner simply brushed aside this submission stating that the judgement of Benny Impex Pvt Ltd-2003(154) ELT

300(GOI) relied upon by the applicants prior to issue of Notification No.84/2010-Cus(NT) dated 17.09.2010.

4.3 Commissioner failed to appreciate the clarification issued by CBEC vide its Circular No. 35/2010-Cus dated 17.09.2010 that Customs components of duty drawback is eligible simultaneously while claiming the rebate on final product.

4.4 Applicant submits that the issue of simultaneous claim of drawback of customs Component and rebate of Central Excise duty was also decided by Reversionary Authority in the case of Benny Impex Pvt Ltd-2003(154) ELT 300(GOI).

4.5 Applicants submit that the Asstt Commissioner had passed subsequent claims filed by the applicants and all other assesses. However only this claim was rejected without recording any cogent findings and merely stating that it is for the applicants to prove that the statement submitted are correct. Applicant submits authorities are not following the consistent system of passing the rebate as some time rejecting the rebate and some time passing the claim. Copy of order No.25-R/RM/AC(RC)/M-III/12-13 dated 24<sup>th</sup> May 2012 passed in applicants own case for the subsequent period.

5. It has been observed that the Revision Application was received beyond stipulated 90 days period, hence, the applicant was asked to file application for condonation of delay. In reply the applicant vide their letter dated 30.5.2013 stated that they received impugned Order-in-Appeal on 15.3.2012 and the Revision Application was dispatched on 09.06.2012, which was well within 3 months and hence condonation of delay is not applicable.

6. Personal hearing scheduled in this case on 08.07.2015, 05.08.2015 and 02.09.2015. Hearing held on 02.09.2015 was attended by Shri P.K. Shetty, Advocate on behalf of the applicant, who reiterated the grounds of revision application. The Department vide their written reply dated 31.08.2015 mainly reiterated contents of impugned Order-in-Appeal.

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

8. On perusal of records, Government observes that the original authority sanctioned the rebate claims. The department filed appeal before Commissioner (Appeals) on the ground that as the applicant has availed drawback, allowing rebate would amount to double benefit. Commissioner (Appeals) allowed the department's appeal. Now, the applicant has filed this Revision Application on grounds mentioned in para (4) above.

9. At the outset, Government observes that the Revision Application has been filed beyond stipulated period of three months. The impugned Order-in-Appeal was

received by the applicant on 15.03.2012 and the Revision Application was filed on 28.06.2012. The applicant was required to file Application for condonation of delay. The applicant has submitted that the impugned Order-in-Appeal was received by them on 15.03.2012. The revision application against the said order was sent on 09.06.2012 within a period of three months. Hence, application for condonation of delay is not applicable in their case.

10. The time limit of filing Revision Application has been specified in Section 35EE(2) *ibid* which reads as under:

*"Section 35EE Revision by Central Government:*

*(1) .....*

*(1A) .....*

*(2) An Application under sub-Section (1) shall be made within three months from the date of the communication to the applicant of the order against which the Application is being made:*

*Provided that the Central Government may; If it is satisfied that the applicant was prevented by sufficient cause from presenting the Application within the aforesaid period of three months, allow it to be presented within a further period of three months."*

Further Rule 10(2) of Central Excise (Appeals) Rules, 2001 provides as under:-

*"The Revision Application sent by registered post under sub-rule (1) shall be deemed to have been submitted to the said Under Secretary on the date on which it is received in the office of such officer."*


From perusal of above provisions, it is clear that stipulated period of filing Revision Application is three months from date of receipt of Order-in-Appeal and is deemed to have been submitted only upon receipt of Revision Application in the office of Revision Application Unit. It is an undisputed fact on record that the Revision Application has been received beyond three months period. This period may be extended by further three months provided sufficient cause has been shown which prevented the applicant from filing Revision Applications in time.

11. In view of the above stated position the applicant has erred in its contention that as they had posted the application on the last day of the stipulated 3 months period, no condonation of delay is required. The applicant has also failed to give any documentary evidences to justify that there were sufficient cause, which prevented them from filing Revision Application in stipulated time in support of their claim for the delay in filing of the Revision Application. Under such circumstances, Government is of the considered opinion that onus to show cause for not filing Application on time is on the applicant who has failed to show sufficient cause that prevented him from

filing Revision Application within stipulated period of three months. The Revision Application has been made contrary to the provisions of Section 35EE (2) of the Central Excise Act, 1944 read with Rule 10(2) of the Central Excise (Appeal) Rules 2011 and is, therefore, liable for rejection.

13. In view of the above, Government rejects the revision application as time barred without going into the merits of the case.

14. So, ordered.

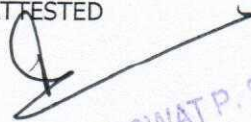


**(RIMJHIM PRASAD)**

Joint Secretary to the Government of India

M/s Inglobe Exports  
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Sonawala Road  
Goregaon (E)  
Mumbai-400063

ATTESTED




BHAGWAT P. SHARMA  
OSD (R.A. WING)

**ORDER NO. 60/2016-CX DATED 11.05.2016**

Copy to:-

1. The Commissioner of Central Excise, Mumbai-III, 4<sup>th</sup> Floor, Vardaan Trade Complex, Wagle Industrial Estate, Thane-400604
2. The Commissioner of Central Excise (Appeals), Mumbai Zone-II, 5<sup>th</sup> Floor, CGO Complex, CBD Belapur, Navi Mumbai-400614
3. The Maritime Commissioner of Central Excise, Mumbai-III, 4<sup>th</sup> Floor, Vardaan Trade Complex, Wagle Industrial Estate, Thane-400604
4. Shri P.K.Shetty, Advocate, F-160, Dreams Mall, LBS Marg, Bhandup (West), Mumbai-400078
5. PA to JS (RA)
- ✓ 6. Guard File
7. Spare Copy.

ATTESTED



(B.P.Sharma)  
OSD (Revision Application)