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**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. 195/24/16-RA /1201

Date of Issue: 24.02.2023

ORDER NO. 72 /2023-CX(WZ)/ASRA/MUMBAI DATED 23.02.2023
OF THE GOVERNMENT OF INDIA PASSED BY SHRI SHRAWAN KUMAR,
PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO
THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL
EXCISE ACT, 1944.

Applicant : M/s. Germinal Power Technologies Pvt. Ltd.,
118, 1st Floor, J.P.House,
Shahpur Jat, Khelgaon,
New Delhi – 110049.

Respondent : Principal Commissioner of Central Excise, Raigad

ORDER

These Revision Applications have been filed by M/s. Germinal Power Technologies Pvt. Ltd., 118, 1st Floor, J.P.House, Shahpur Jat, Khelgaon, New Delhi – 110049 (hereinafter referred as the applicant) against the Order-in-Appeal No. CD/828/RGD/2015 dated 07.12.2015 passed by the Commissioner (Appeals), Central Excise, Mumbai-II.

2. The brief facts of the case are that the applicant, a merchant exporter filed rebate claims on 20.02.2015 along with other documents under the provisions of Rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004-CE(NT) dated 06.09.2004. On scrutiny of the same it was noticed that the goods were exported on 10.12.2013, 04.01.2014, 10.01.2014 & 23.01.2014 (date of sailing as per mate receipt) whereas the export claim was filed on 19.02.2015 after expiry of one year from date of export. The original authority rejected the rebate claims on the ground of time bar by considering the date on which the claim was filed with relevant documents is over one year from the date of export.

3. Being aggrieved by the aforesaid Order in Original, the applicant filed appeal before Commissioner (Appeals) who vide Order in Appeal No. CD/828/RGD/2015 dated 07.12.2015 (impugned Order) dismissed the appeal filed by the applicant and upheld the Order in Original.

4. Being aggrieved by the impugned Order, the applicant has filed the present revision applications mainly on the following common grounds:-

4.1 The Applicant submitted that they have filed appeal before Delhi Maritime Commissioner on 01.12.2014 and it was returned to the Applicant vide Maritime Commissioner, Delhi's letter dated 11.12.2014. This letter was sent by Speed Post. It must have received very late. The exact date of receipt not known. Any how the Rebate claims were filed at Delhi within the stipulated period and this date may be taken as date of filing the rebate claim. It is the mistake of Maritime Commissioner Delhi that he should not

have returned the claims to Applicants, instead he should have sent the claims directly to Maritime Commissioner, Raigad under intimation to the Applicants. The rebate is the beneficial scheme of Government to encourage export and the duty should not be exported along with the goods as the export market is very competitive. Hence the rebate claims should not be rejected on technical and procedural mistakes if any.

4.2 The Applicants submitted that the deficiency memo was issued on 22 April, 2015 and fixing P.H. of three dates are also mentioned in the same letter fixing PH. No other separate P.H. letter was issued except the P.H. dates shown on the Deficiency memo itself. The Applicants are situated at Delhi. The OIO is passed on 08.05.2015 within 15 days of issue of deficiency memo and even before one last date of PH. This is nothing but violation of principles of natural justice

4.3 The Applicants immediately on receipt of this Deficiency memo submitted a reply to the Deficiency memo vide their letter dated 01.05.2015 stating that they have already filed these rebate claims in time before the Deputy/Asst. Commissioner (Technical), Central Excise, Delhi-II, C.R. Building, L.P. Estate, New Delhi-110002 on 01.12.2014. But on 11.12.2014 all documents were returned in respect of all rebate claims documents by the Delhi Central Excise Department and advised to file the rebate claims before Maritime Commissioner JNCH, Nhava Sheva, Raigad (Maharashtra). The total amount of Rebate claims returned for Rs.15,69,514/-. Out of which three rebate claims total Rs.1,77,778/- which were within one year has been sanctioned by Maritime Commissioner, Raigad before issue of deficiency memos. Hence the rejection of Rebate claim is only for total Rs 13,91,736/- out of Rs. 15,69,514/- in this impugned OIO. The Maritime Commissioner, Raigad did not take into cognisance of this letter of reply submitted to the deficiency memo at all even though said letter was received by Maritime Commissioner, Raigad before issue of the Order in original.

4.4 The Applicants state and submit that they have filed the impugned rebate claims under dispute before Deputy Commissioner, Maritime

Commissioner Delhi on 01.12.2014. This is submitted before the stipulated period one year as per Section 11B of Central Excise Act, 1944. This can be verified from the letter enclosed above. The Applicants received the claims back from Maritime Commissioner, Delhi vide Letter C. No. IV(16)163/T/D-II/Rebate/14-15/13963 dated 11.12.2014 directing the applicants to file rebate claims before Maritime Commissioner Central Excise, Raigad, letter dated 11.12.2014 sent by Speed Post and received by Applicants' much after. Actually, instead of returning the rebate claims vide letter to the Applicants the Maritime Commissioner, Delhi should have transferred directly the Rebate claims to Maritime Commissioner, Raigad as, as per them Maritime Commissioner, Raigad is the proper authority. The Applicants immediately filed the rebate claim online on 19.02.2014. The reason for delay to file at Raigad is that they are filing rebate claim at Raigad for the first time & at Raigad Rebate claims need to be filed online first. Whereas at Delhi the applicants were filing rebate claims with documents with hard copies. There is no procedure of on line system at Delhi. Whereas at Raigad, the Applicant's need to file rebate claims online. They were not conversant with the procedure of online filing and they had to catch hold of a person conversant with filing online. Since they are new to Mumbai, they found it very difficult and any how they have with much difficulty managed to file on 19.2.2014 online. By deducting the number of days the Maritime Commissioner, Delhi has taken in his office to return the rebate claims is deducted from the date of claim filed at Raigad, then in that case all claims are filed within the stipulated period of one year. Further all rebate claims were filed before Maritime Commissioner, Delhi within the stipulated period. The date of filing before the Maritime Commissioner at Delhi i.e. of 01.12.2014 may be taken as date of submission of rebate claim. By taking the date of 01.12.2014 as the rebate claim filed dated, the Rebate claims are not time barred as claimed in the OIO. Delhi Maritime Commissioner as well as Maritime Commissioner, Raigad are under the same Board and one and same.

5. Personal hearing in this case was held on 05.07.2022 Shri R.V. Shetty, and Shri Sharad R. Shetty, Advocates appeared on behalf of the

applicants and submitted that they had filed their claim with jurisdictional Division Office who returned the same and advised to file with Maritime Commissioner. They contended that original claim filed being in time, their claim should not be rejected on time barred ground.

6. Government has carefully gone through the relevant case records oral and written submissions and perused the impugned order-in-original and order-in-appeal.

7. Government finds that the issue involved in the present case is limited to deciding whether the date, on which the rebate claims in question were presented before the Deputy/Asst. Commissioner (Technical), Central Excise, Delhi-II, as against the Maritime Commissioner JNCH, Nhava Sheva, Raigad (Maharashtra), could be held as the relevant date under Section 11B of the Act on which the claims were submitted by the applicant. Government finds that in this case the rebate claims were presented by the applicant before the Deputy/Asst. Commissioner (Technical), Central Excise, Delhi-II on 01.12.2014 which was returned by vide letter C.No. IV(16)163/T/D-II/Rebate/14-15 dated 11.12.2014 with the following remarks :-

“On scrutiny of documents, it has been observed that you have exported the goods from JNCH NHAVA Shiva, Raigad. As per notification No. 40/2001-CE(NT) & 42/2001-CE(NT) both dated 26.06.2001 as amended, and Board’s Circular No. 758/74/2003-CX dated 29.10.2003, the rebate claims are required to be filed with jurisdictional Maritime Commissioner of the port of exports. Therefore, the rebate claims of Rs. 15,69,514/- is being returned with original documents, for further submission to Maritime Commissioner JNCH, NHAVA SHIVA, RAIGAD (Maharashtra).”

Government finds that the Deputy/Asst. Commissioner (Technical), Central Excise, Delhi-II had not accepted the said claims, but had merely made an endorsement on the same guiding the applicant to file the said claims with the proper officer. Government finds that the date of export of the consignments in question are 10.12.2013, 04.01.2014, 10.01.2014 &

23.01.2014 which indicates that the applicant had sufficient time available for submitting the subject claims to the proper officer, i.e. the Maritime Commission, Raigad after the claims were returned by Central Excise Delhi-II on 11.12.2014. Government notes that the applicant, however, filed these claims before the Maritime Commission, Raigad on 19.02.2015, which is more than two months after being correctly guided. The explanation provided by the applicant that they were not conversant with the procedure of online filing at Raigad, which led to such delay is unconvincing, particularly in light of the guidance provided by the Central Excise office in Delhi-II. Government notes that the issue involved in the present case was not of a technical or complicated nature wherein filing online claims could result in a delay; it was a simple matter of filing the said claims before the proper authority i.e. Maritime Commissioner, Central Excise, Raigad and not in Delhi. Thus, Government does not find any merit in this plea of the applicant and rejects the same.

8. Further, Government finds that here it is not the case that the Assistant Commissioner(T), Central Excise Delhi-II had accepted the rebate claims. As discussed above, the Central Excise Delhi-II had immediately returned the claims to the applicant with the remarks pointing them to the proper officer before whom the said claims should be filed. Government finds that in this case, accepting the date of presentation of the claims before the Assistant Commissioner(T), Central Excise Delhi-II as the date of submission, would lay down a bad precedent, as giving credence to such a practice would result in sanctifying a process which can be used to circumvent the limitation of time prescribed by laws governing grant of rebate/refund.

9. Given the above, Government holds that the date of attempt of presentation of the rebate claims by the applicant before the Central Excise Delhi-II cannot be held to be the date on which they submitted the said rebate claims. It is not in dispute that the claims were submitted to the jurisdictional Maritime Commissioner after the expiry of the period of one year from the date of export, thus Government finds that the rebate claims

in question filed by the applicant are time barred and liable for rejection and accordingly holds so.

10. In view of the above, Government upholds the impugned Order-in-Appeal dated 07.12.2015. The Revision Application filed by the applicant is rejected.

Shrawan Kumar
23/12/23
(SHRAWAN KUMAR)

Principal Commissioner & ex-Officio
Additional Secretary to Government of India

ORDER No. 72 /2023-CX (WZ) /ASRA/Mumbai Dated 23.02.23

To,

M/s. Germinal Power Technologies Pvt. Ltd.,
118, 1st Floor, J.P.House,
Shahpur Jat, Khelgaon,
New Delhi - 110049.

Copy to:

1. Principal Commissioner of Central Excise, Raigad.
2. Commissioner (Appeals), Central Excise, Mumbai-II.
3. The Dy. Commr(Rebate)Raigad.
4. Shri R.V.Shetty, Advocate, 101-E, Sterling Court, Next to Maheshwari Nagar, Orkay Mill Road, MIDC, Andheri(E), Mumbai - 400 093.
5. Sr. P.S. to AS (RA), Mumbai
6. Guard file
7. Spare Copy.