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SPEED POST



**F.No.195/1663/12-RA**  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(REVISION APPLICATION UNIT)

14, HUDCO VISHALA BLDG., B WING  
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NEW DELHI-110 066

Date of Issue...15/9/15

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**Order No. 78/2015-CX dated 11.09.2015** 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.

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Subject : Revision Application filed under Section 35 EE of the Central Excise Act, 1944 against orders-in-appeal No.122/2012 (Ahd-III)/SKS/Comm(A)/Ahd dated 14.09.2012 to passed by the Commissioner of Central Excise (Appeals)-III, Ahmadabad.

Applicant : M/s Vellely Velvete Pvt. Ltd.

Respondent : Commissioner of Central Excise, Ahmedabad-III

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## ORDER

This revision application is filed by the applicant M/s Velley Velvette (now known as Milton Industries Ltd.), Gujarat, (hereinafter referred to as the Applicant) against Order-in-Appeal No. 122/2012 (Ahd-III)/SKS/Comm(A)/Ahd dated 14.09.2012 passed by the Commissioner of Central Excise (Appeals)-III, Ahmedabad, with respect to Order-in-Original No. 1898/REF/C.Ex/2011 dated 18.11.2011 passed by the Asstt. Commissioner of Central Excise, Divison- Gandhinagar, Ahmedabad-III.

2. Brief facts of the case are that the applicant are engaged in the manufacture of PVC cloth & produce made thereof and availing Cenvat Credit. The applicant had filed a claim on 08.07.2011 for rebate of duty paid for the goods exported under Section 11B of Central Excise Act, 1944 read with Rule 18, for Rs. 1,32,284/- in respect of goods exported on 12.06.2009 for goods cleared on ARE-1 No. 4 dated 02.06.2009. Since the said rebate claim has not been filed within the stipulated time limit of one year under Section 11 B of Central Excise Act, 1944, a show cause notice dated 12.09.2011 was issued to the applicant as to why the same should not be rejected as hit by the time bar. The adjudicating authority vide the impugned order, rejected the rebate claim holding it as time barred as the relevant date of export of the goods i.e. the date of issuance of bill of lading is 12.06.2009 and the claim was filed on 08.07.2011 which was required to be filed on or before 11.06.2009.

3. Being aggrieved by the said Order-in-Original, applicant filed appeal before Commissioner (Appeals), who rejected the same.

4. Being aggrieved by the impugned Order-in-Appeal, the applicant has filed this revision application under Section 35EE of the Central Excise Act, 1944 before Central Government on the following grounds:

4.1 That the applicant has filed rebate claim after one year i.e. from the date of export but the customs authority has released the necessary documents on 21/05/2011 and therefore, there is no delay in submitting the documents at applicant's hand. That the rebate claim ought not to be denied on the above ground. That looking to the documents submitted by the applicant, there is specified remarks mentioned by the Customs department that "After approval of DC on 21/05/2011, ARE is released". On the face of shipping bill No. 1377393, there is nothing of test result as well as this is treated as EP copy and duly signed by the concerned authority. That this fact cannot be ignored while sanctioning the rebate claim that it is delayed by the customs authority.

4.2 That the Commissioner of Customs has permitted to convert the shipping from DEEC to DEPB scheme. That there is no fault on the applicant part to provide necessary document for rebate claim late. That it is beyond control of the applicant to collect the necessary documents from the customs department in time. On this

ground the rebate claim rejected by the said authority on limitation aspect is not proper, legal and as per law.

4.3 That in the Show Cause Notice as well as in said Order-In-Original, there is no dispute about the export of goods on payment of duty and it is established from the documents like ARE-1 No.4, Shipping Bill No.1377393 and bill of Lading No. INAMD000725. The substantive benefit of rebate cannot be denied on procedural grounds. That the said order requires to be set aside.

4.4 The applicant has also placed reliance upon various case laws in favour of their contentions :-

- (i) 2006(200) ELT 0171 in the case of IN RE: Harison Chemicals.
- (ii) 2009 (233) ELT 46 (HC) in the case of Cosmonaut Chemicals & Anr. Versus Union of India & Anr.
- (iii) 2009(244) ELT 492 in the case of Chamunda Pharma Machinery Pvt. Ltd. Versus Commissioner of Central Excise, Ahmedabad-I
- (iv) 2012(275) ELT 277 (GOI) in the case of M/s. Reliance Ind.

5. Personal hearing was scheduled in this case on 08.04.2015 & 21.04.2015. Hearing held on 21.04.2015 was attended by Shri Ishwar Singh, Consultant on behalf of the applicant who reiterated the grounds of Revision Application. A written submission dated 20.04.2015 was also submitted by the applicant. Apart from reiteration of ground of revision application, the main contents of said written submission done as under:-

- (i) The assessment of the goods and Shipping Bill filed under Section 50 of the Customs Act, 1962 was kept pending for the outcome of the test report.
- (ii) Applicant vide letter Dt.18.01.2009 & 12.07.2010 explaining their stand requested for re-test of remnant sample and release of EP Copy of Shipping Bill.
- (iii) Applicant has contended that their shipping bill was initially assessed provisional for want of test report, that their shipping bill was finally assessed on 21.05.2011 and that for calculation of date of 21.05.2011 should be taken for calculation of time limit i.e. in terms of explanation B(eb) of sub section (5) of Section 11 B of the Central Excise Act, 1944 read with explanation (1 B) ( c ) to Section 27(1) of the Customs Act, 1962.

(iv) The applicant placed reliance on Hon'ble High Court's judgement dated 30.07.2008 in case of M/s Cosmonaut Chemicals Vs UOI.

The department vide letter dated 06.04.2015 mainly reiterated contents of impugned order.

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

7. Government observes that the rebate claim was rejected by the original authority as time barred having been filed after stipulated one year period. The Commissioner (Appeals) upheld the impugned Order-In-Original. Now, the applicant has filed this revision application on grounds mentioned in para 4 above.

8. 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.

9 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.

10. Government also notes that applicant has contended that their shipping bill was initially assessed provisionally for want of test report, that their shipping bill was finally assessed on 21.05.2011 and that for calculation of date of 21.05.2011 should be taken for calculation of time limit in terms of explanation B(eb) of sub section (5) of Section 11 B of the Central Excise Act, 1944 read with explanation (1 B) ( c ) to

Section 27(1) of the Customs Act, 1962. Now Government proceeds to examine the applicant's contention in the light of fact of the case viz a viz statutory provisions.

10.1 Explanation 1(B) ( c ) of the Section 27 (1) of the Customs Act, 1962 reads as under:-

*"when any duty is paid provisionally under Section 18, the limitation of one year shall be computed from the date of adjustment of duty after the adjustment of duty after the final assessment thereof or in case of re-assessment from the date of such re-assessment".*

Section 27 of the Customs Act, 1962 deals with refund of customs duties. As such the above said provision will be applicable only for application of refund made under Section 27 of the Customs Act, 1962. In this case, the application of rebate was made Rule 18 of Central Excise Rules, 2002 read with Section 11 B of the Central Excise Act, 1944. As such, the explanation 1 (B) ( c ) of the Section 27 (1) of the Customs Act, 1962 will not be applicable in the instant case.

10.2. Government notes that explanation B (eb) given in the sub-section (5) of Section 11 B of the Central Excise Act, 1944 reads as under:-

*" In cases where duty of excise is paid provisionally under this Act, or the Rules made thereunder, the date of adjustment of duty after the final assessment thereof".*

The above said explanation applies only when the duty of excise has been paid provisionally. In this case, the duty of excise was paid finally and not provisionally. It was at the Customs level, where the shipping bill was assessed provisionally subject to final outcome of test report to decide the benefit of DEEC Scheme under Notification No. 93/2004-Cus dated 10.09.2004. As such, there is no provisional payment of excise duty in this case. Hence, the applicant's contention is not applicable to this case.

11. The applicant has also contended that the delay in filing of rebate claim is due to delay in receipt of ARE-1, EP copy of Shipping Bill from Customs. In this regard, Government notes that sub-paragraph 2.4 of Chapter IX of CBEC Manual reads as under:

*"2.4 It may not be possible to scrutinize the claim without the accompanying documents and decide about its admissibility. If the claim is filed without requisite documents, it may lead to delay in sanction of the refund. Moreover, the claimant of refund is entitled for interest in case refund is not given within three months of the filing of claim. Consequently, submission of refund claim without supporting documents will not be allowed. Even if claim is filed by post or similar mode, the claim should be rejected or returned with Query Memo (depending upon the nature/importance of document not filed).*

*The claim shall be taken as filed only when all relevant documents are available. In case any document is not available for which the Central Excise or Customs Department is solely accountable, the claim may be received so that the claimant is not hit by limitation period".*

In view of these instructions, applicant could have filed rebate claim within one year's time limit without documents claimed to be obtained from Customs so as to avoid the same getting time barred and avoiding failure to comply with the statutory requirement of filing claim within one year under Section 11 B of the Act.

12. Government also notes following Hon'ble Supreme Court and High Court judgements have laid down the principles that in making refund/rebate claims before departmental authority, an applicant is bound within the four corners of the statute and period of limitation prescribed under Central Excise Act and Rules framed there under must be adhered to and the authorities functioning under the Act are bound by provisions of the Act.

12.1 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.

12.2 Further, 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."*

12.3 The Hon'ble High Court of Gujarat in the case of Alembic Glass Ind. Ltd. vs. 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.L.T.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."*

12.4 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.

12.5 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.

12.6 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 where under 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.*

12.6.1 The applicant in this regard has placed reliance on the decision in the case of M/s Cosmonaut Chemicals Vs UOI 2009(233) ELT 46 (HC). Government finds that the facts in the said case are different from the case in hand to the extent that in the case of Cosmonaut Chemicals, the delay was due to late printing of EDI Shipping Bill. In the present case, the documents were pending to determine applicant's eligibility for benefit of Notification No.93/2004-Cus dated 10.09.2004 as claimed by the applicant and cannot be attributed as a delay on part of the Customs authority. It is not a case, where documents were not available or copies or prints could not have been obtained by the applicant for filing the rebate



claim. Government also notes that Hon'ble Gujarat High Court in its judgment dated 15.12.2011 in case of IOC Ltd. Vs. UOI as mentioned above has also observed that the facts in the case of Cosmonaut Chemicals were peculiar.

12.7 In a 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.

13. Government finds that the applicant has cited various case laws in support of its 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.

14. 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.

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 to the Government of India

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Attested



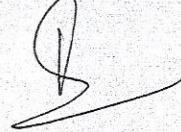
(B.P.Sharma)  
OSD (RA)

**GOI Order No. 78/2015-CX dated 11.09.2015**

Copy to:

1. Commissioner of Central Excise, Ahmedabad-III, Custom House, Navrangpura, Ahmedabad-380009
2. Commissioner of Central Excise (Appeals-III, 7<sup>th</sup> Floor, Central excise Bhavan, Ambawadi Nr. Poltechnic, Ahmedabad-380015
3. The Asst. Commissioner Central Excise Divn.- Gandhinagar, Ahmedabad-III.
4. Mr. Ishwar Singh, Advocate & Consultant, A-419, Somdutt Chember-I, 5, Bhikaji Cama place, R.K.Puram, New Delhi-110076.
5. Guard File.
6. PA to JS(RA).
7. Spare Copy.

ATTESTED



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