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F.No. 195/1120/11-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

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

Date of Issue..18-3-14...

ORDER NO. 80/2014-CX DATED 13.03.2014 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D.P.SINGH, 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.PKS/93/BEL/2011 dated 17.08.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III,

Applicant : M/s A.M.Todd Co. India Pvt. Ltd., Mumbai.

Respondent : The Commissioner of Central Excise, Mumbai-II

ORDER

This Revision Application is filed by M/s A.M.Todd Co. India Pvt. Ltd., Mumbai against the Order-in-Appeal No.PKS/93/BEL/2011 dated 17.08.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-II with respect of Order-in-Original passed by Deputy Commissioner (Rebate), Central Excise, Mumbai-III.

2. Brief facts of the case are that the applicant M/s A.M.Todd Co. India Pvt. Ltd., exported goods on 22.7.2009 and the rebate claim was filed on 8.9.2009 with Maritime Commissioner, Raigad. The rebate claim was received by Maritime Commissioner, Central Excise, Rebate, Mumbai-III from Maritime Commissioner Raigad on 1.12.2010 i.e. one and half years after the export. In other words, the claim was time barred in terms of Section 11B of Central Excise Act 1944. According, a show cause notice was issued on 10.12.10, which culminated into issuance of the impugned order, under which rebate claim of Rs.1284340/- was rejected as time barred by Maritime Commissioner (Rebate), Central Excise, Mumbai-III.

3. Being aggrieved by the said order-in-original, applicant filed appeal before Commissioner (Appeal), who rejected the same.

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

4.1 Regarding the allegation that the claim has been filed before the Assistant Commissioner (Rebate), Raigad instead of Deputy Commissioner (Rebate), Mumbai-III at Thane it is submitted that due to oversight they have filed the claim before the Assistant Commissioner (Rebate) Raigad on 08.09.2009 within time. In this case the Export was effected on 31.07.2009 and within 40 days of export Applicants have filed the Rebate claim before the Assistant Commissioner (Rebate), Raigad. Immediately

after realizing that applicant has filed the Rebate claim wrongly at Raigad, the applicants requested the Assistant Commissioner to transfer the claim to Deputy Commissioner (Rebate), Mumbai-III, Thane. After pursuing relentlessly the claim was directly transferred by the Assistant Commissioner (Rebate), Raigad to Deputy Commissioner (Rebate), Mumbai-III, on 01.12.2010. Since the applicants have filed the claim within time i.e. on 08.09.2009. The date for the purpose of submission should be taken as 08.09.2009 and not 01.12.2010. This delay is not because of the Applicants and it was because of the inter Commissionerate transfer of claims. Both the offices are of the same employer i.e. CBEC. The applicants could not do anything for the same. Further, applicants submitted letter to Assistant Commissioner (Rebate), Raigad to transfer the file to Assistant Commissioner (Rebate), Mumbai-I, Thane well within time of expiry.

4.2 The applicants received only one P .H. letter from the Commissioner (Appeals) against which they requested for postponement of hearing vide their letter dated 1.6.2011. The applicants did not receive any further letter of P.H. They only received the Order in Appeal thereafter.

4.3 Due to the mistake of a new employee in their organization, the rebate claim in question was submitted to the office of the Maritime Commissioner, Raigad under his impression that since the goods are being, exported from JNPT, Nhava Sheva, Maritime Commissioner, Raigad is the proper office to present the claim.

4.4 As per the provisions of Citizen Charter issued in December, 2008 wherein it is mandatory to finalize the rebate claims within 90 days of the filing of rebate claims and similar provisions also exist under Section 11B of the Central Excise Act, 1944. In their case Maritime Commissioner, Raigad neither finalized the claim nor promptly returned them the claim alongwith the documents, despite their letter and follow-up. The delay is thus directly attributed to the non-cooperation from the office of Maritime

Commissioner, Raigad for which they requested to condone the delay considering that the circumstances were beyond their control.

4.5 The applicants have exported the goods under ARE-1 and submitted the triplicate copy of ARE-1s within 24 hours as required. After export submitted rebate claim along with all the required documents. Out of this Shipping Bill, ARE-1 in original and Duplicate, Custom Certified Export Invoice and Packing slip. All these documents are properly endorsed by Customs Authorities showing that whatever goods cleared under ARE-1 has been duly exported. Along with the Rebate claim the applicants has also submitted the Triplicate copy of ARE-1 received from the Range Supdt. in sealed cover and Duplicate Original copy of the Central Excise Invoice showing therein the Description of goods cleared, quantity cleared, duty payable, etc. all these particulars are shown on the ARE-1 and description and quantity is also shown on the S.B. and export Invoice. There is no allegation that whatever cleared has not been exported. It is also accepted that the goods cleared under ARE-1 has been exported.

5. Personal hearing was scheduled in this case on 7.8.13 & 11.3.14. Hearing held on 7.8.13 was attended by Shri R.V.Shetty, Advocate on behalf of the applicant, who reiterated the grounds of revision application. Nobody attended the hearing on 11.3.14. However, applicant has requested vide letter dated 27.2.14 to decide the case on the basis of submissions made during hearing held on 7.8.13.

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

7. In this case applicant had filed the instant rebate claim on 8.9.2009 before ACCE (Rebate), Raigad in respect of goods exported on 31.7.2009. In fact the proper rebate sanctioning authority was Maritime Commissioner, Central Excise (Rebate) Mumbai-III. The applicant requested the ACCE, Raigad to transfer the claim papers to Maritime Commissioner, Mumbai-III who finally transferred the said claim on 1.12.2010.

However, the Maritime Commissioner rejected the claim of Rs.1284340/- as time barred treating the date of filing rebate claim as 1.12.10. Commissioner (Appeals) upheld the said order-in-original. Now, the applicant has filed this revision application on grounds mentioned in para (4) above.

8. Government notes that there are catena of judgment wherein it has been held that time limit to be computed from the date on which refund / rebate claim was originally filed. High Court and CESTA Tribunal, have held in following cases that original refund/rebate claim filed initially within prescribed time limit laid down in section 11B of Central Excise Act, 1944 and the claim resubmitted along with some required documents/prescribed format on direction of department after the said time limit cannot be held time barred as the time limit should be computed from the date on which rebate claim was initially filed.

- (i) CCE Delhi-I Vs. Aryan Export & Ind. 2005 (192) ELT 89 (DEL.)
- (ii) A Tosh & Sons Pvt. Ltd. Vs. ACCE 1992 (60) ELT 220 (Cal.)
- (iii) CCE Bolpur Vs. Bhandiguri Tea Estate 2001(134) ELT 116 (T. Kol.)
- (iv) Good Year India Ltd. Vs.CCE Delhi 2002 (150) ELT 331 (T.Del)
- (v) CCE Pune-I Vs. Motherson Sumi Systems Ltd. 2009 (247) ELT 541 (T. Mum.)

Government of India has also held in a case of M/s IOC Ltd. reported as 2007(220) ELT 609 (GOI) as under:-

"Rebate limitation-Relevant date-time Limit to be computed from the date on which refund/rebate claim was initially filed and not from the date on which rebate claim after remaining defects was submitted section 11B of Central Excise Act, 1944."

In view of above, the said rebate claims cannot be treated as time barred since it was originally filed before department on 8.9.2019 which is well within the limit period of one year stipulated in section 11B of Central Excise Act, 1944. Government is of considered view that case is required to be remanded back for denovo consideration, for deciding the case on merits.

9. In view of above circumstances, Government sets aside the impugned orders and remands the case back to original authority for deciding the case matter afresh taking into account the above said observations. A reasonable opportunity of hearing will be given to both the parties before deciding the case.

10. Revision Application is disposed off in above terms.

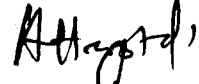
11. So, ordered.



(D.P. Singh)

Joint Secretary (Revision Application)

M/s A.M.Todd Co. India Pvt. Ltd.
20, Rajmahal, 84, Veer Nariman Road
Churchgate
Mumbai - 400020.



(भागवत शर्मा/Bhagwati Sharma)
सहायक आयुक्त/Assistant Commissioner
C B E C - O S D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revenue)
भारत सरकार/Govt. of India
दिल्ली / New Delhi

G.O.I. Order No. 80 /14-Cx dated /3.03.2014

Copy to:-

1. The Commissioner, Central Excise, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai 400614.
2. Commissioner of Central Excise (Appeals), Mumbai-III, Mumbai Zone-II, 5th Floor, C.G.O. Complex, C.B.D. Belapur, Navi Mumbai 400614.
3. The Deputy Commissioner, Central Excise (Rebate) Mumbai-III, Vardaan Trade Centre, 4th Floor, MIDC, Wagle Industrial Estate, Thane (West) -400604.
4. ✓ PS to JS (Revision Application)
5. Guard File
6. Spare Copy.

(Attested)



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